
(1993) 08 P&H CK 0023
In the Punjab And Haryana At Chandigarh

Shri Jai Nath Mandal

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 24-08-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1994) 2 LLJ 789 : (1994) 106 PLR 73

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Ravi Sodhi, for the Appellant; A.G. Nasih, Asst. A.G. (PF) and S.S. Saini, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Petitioner, through present writ filed by him under Articles 226/227 of the constitution of India, seeks setting aside of order dated July 23, 1993, Annexure P-1, by which the Government declined to refer the dispute between him and the respondent- management to the Labour Court for adjudication on the ground that he had lost his right due to giving resignation at his own will.

2. The case of petitioner as pleaded and so argued by learned counsel appearing for him is that he was employed as a Clerk, w.e.f. April 1, 1985, even though appointment letter was issued to him on May 6, 1987 appointing him as Typist-Clerk at a basic salary of Rs. 100/- w.e.f. April 1, 1987. He has placed on record a true copy of the E.S.I, card and Insurance number showing the date of his employment with the respondent management as April 1, 1985. He also has placed on record a copy of provident fund statement showing annual statement of his account as on December 31, 1986. With effect from January 1, 1988 the terms of his employment were revised as a result of which a part of the clearness allowance was merged with the basic salary. Petitioner was placed in the scale of Rs. 700-50-900-1120-60-1360-65-1750-70-2170-EB-75-2620 and his basic salary was fixed at Rs. 1010. The case of the petitioner is that he had done commendable job during the course of his service and he was issued a letter of

that effect by the management. He was also paid Rs. 2000/- as ex-gratia for the extra efforts put in by him during the year 1989-90. On March 28, 1991, however, when he had finished his work and the working hours of the office were about to be over, he was advised by Ravi Chopra, Assistant Sales Manager to stay in the office till further orders. Punkaj Mohindroo, Area Sales Manager, K. Rajgonalan, Administrative Executive based at Delhi Branch office. Ravi Chopra, Assistant Sales Manager and Ramesh Gupta, Sales Officer, posted at Faridabad joined together and at about 7.30 P.M. he was called in the chamber of Ravi Chopra and was threatened by the said officers and forced to submit his resignation. No date, it is alleged, was mentioned on the resignation letter and the same was forcibly obtained from him. Just on the next day i.e. March 29, 1991 when he reported for duty, he was assigned no work and thus he lodged a complaint to the Labour department on April 2, 1991. He also served a demand notice on the Company. Notice of reconciliation proceedings was issued by the Labour-cum-Conciliation Officer to the Company and it filed its comments. The reconciliation proceedings, however, failed and the matter when reported to the Government, culminated into the order, Annexure P-1 refusing to refer the dispute between the parties to the Labour Court or Industrial Tribunal, as the case may be, on the ground as mentioned in the earlier part of the judgment. It is argued by learned counsel for petitioner that the fact as to whether petitioner had resigned voluntarily or it was a forced resignation which would tantamount to terminations of service, was a question of fact and could be determined only by the Labour Court and not by the Government. For the aforesaid contention of learned counsel, reliance has been placed on a decision of Supreme Court in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, wherein it was held as under :-

"It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhushan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that convoy drivers are not workmen and accordingly, no reference can be made. Thus the dispute has been decided by the Government which is undoubtedly not permissible."

It was further held in the aforesaid judgment (p. 561):-

"Further the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the power of the Tribunal for adjudication of valid disputes, and to allow the government to do so would be to

render Section 10 and Section 12(5) of the Act nugatory."

Learned counsel for the petitioner also relies upon another decision of the Supreme Court in *Ram Avtar Sharma and Others Vs. State of Haryana and Another*,) wherein it was held thus (p. 191-192):-

"The reasons given by the government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and there was sufficient and adequate evidence to hold the charges proved. It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore, if the grounds on which or the reasons for which the Government declined to make a reference u/s 10 are irrelevant, extraneous or not germane to the determination, it is well settled that party aggrieved thereby would be entitled to move the Court for a writ of mandamus."

3. The cause of petitioner has been opposed and in the written statement filed on behalf of the respondent-management it has been pleaded that the order of refusal of the Government is based upon admitted facts that the petitioner had submitted his resignation. Petitioner had requested in the letter of resignation that his dues be cleared immediately. He worked in the office with effect from March 29, 1991 to March 30, 1991 and March 31, 1991 happened to be a weekly off day. He had marked attendance in the register by putting his initials. On his oral request on March 30, 1991, his resignation was accepted. It is further pleaded that his claim to retract from the resignation had been found to be after thought and so were the reasons given by him.

4. After hearing the learned counsel for the parties and going through the records of the case, I am of the considered view that the Government at its end could not decide the controversy between the parties. It was not an admitted case of the parties that petitioner had resigned and that too voluntarily. As mentioned above, petitioner filed a complaint just on April 2, 1991 within a couple of days from the date when he was refused to be assigned any job and he did not lose much time even in making a demand notice. In the complaint as also in the demand notice it has been mentioned that the management had forced the resignation upon petitioner. It cannot be disputed that if the resignation is not voluntary or has been obtained on force, coercion and other allied grounds, the same would tantamount to termination of service. The Government has very limited scope in the matter. It performs only an administrative function and not a Judicial or quasi judicial function and judicial function is exclusively in the domain of Labour Court. While performing administrative functions, the Government cannot go into the merits of the dispute and take upon itself the determination of

the lis. The matter is squarely covered in favour of petitioner by the judgment of Supreme Court in Telco Convoy Drivers Mazdoor Sangh and Anrs. v. State of Bihar and Ors. (supra). This petition is consequently allowed and the order (annexure P-1) is quashed. A direction issued to the Government to make reference to the Labour Court or Administrative Tribunal, as the case may be, within one month from today.

5. There shall be no order as to costs.