
(1996) 12 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : C.W.Ps. No. 364, 365, 366, 367, 368, 369 and 370 of 1996

Sidhartha Super Spining Mills Ltd.

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(4), 12(4)

Citation : (1997) 2 ShimLC 224

Hon'ble Judges : M. Srinivasan, C.J.; P.K. Palli, J

Bench : Division Bench

Advocate : R.L. Sood, for the Appellant; Inder Singh, General for Respondent No. 1 and Ramakant Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—These writ petitions are directed against a common award passed by the Labour Court, Himachal Pradesh, Shimla in seven references made to it by the State Government under notifications dated 28-1-1994. They relate to seven different workers working in M/s. Sidhartha Super Spinning Mills Ltd. which is the Petitioner in all these petitions. There was a proceeding for conciliation before the Conciliation Officer at the instance of workers, who complained that their services had been terminated unlawfully by the Management. The Petitioner filed a written reply on 30-8-1993, in which they raised a contention, inter alia, that the workers had abandoned their service and they were not terminated as such. But thereafter, the Petitioner did not take interest to attend the conciliation proceeding regularly and on the other hand expressly informed the Conciliation Officer that it would not take part in such proceeding. The matter was posted before the Conciliation Officer on 31-8-1993, 3-9-1993, 10-9-1993, 20-9-1993, 30-9-1993, 18-10-1993, 22-11-1993, 16-12-1993 and lastly on 31-1-1994. The Petitioner was represented in one or two hearings but did not think fit to participate in the proceeding.

2. On a report by the Conciliation Officer u/s 12(4) of the Industrial Disputes Act, 1947, the Government decided to make a reference to the Labour Court, on the following question for decision:

Whether the termination on...of Shri....S/o Shri...worker, by the management of M/s. Sidhartha Super Spinning Mills, due to union activities by stopping his entry at the factory gates is legally justified, if not then to what relief and compensation the worker is entitled to.

The blanks were filled up with regard to each worker with the appropriate date of such termination, the name of said worker and the name of his father. The Government issued seven such notifications. When the matter was taken up by the Labour Court it found that the facts were similar and identical based on the narrative or occurrence in terms of termination of services or retrenchment of the workman. It observed that the entire facts, pleading, narrative, evidence and proof brought on record by each of the Petitioner are wholly identical and similar, Therefore, the Labour Court said that all the petitions could be conveniently disposed of by a common award.

3. One of the main contentions raised by the Petitioner was that the services of the workers were not terminated by the Management but on the other hand, they abandoned their services. The Labour Court framed five issues, which read as follows:

1. Whether the termination of the Petitioner by the Respondent on 4-7-1993 is illegal and unjustified? If so, to what relief the Petitioner is entitled?

2. Whether the Petitioner had abandoned the job himself?

3. Whether the reference, in question, is not maintainable and valid for the reasons mentioned in preliminary objections 1, 2, 3 and 5?

4. Whether Petitioner now gainfully employed with some other employer, as alleged? If so its effect?

5. Relief.

4. As regards the contention of the Petitioner that the workers abandoned their services, the Labour Court found that the same was unsustainable as there was no evidence in support thereof. Under issue No. 3, whether the reference was not maintainable and valid, the Labour Court dealt with it in paragraphs 18 to 23 of the award. It is sufficient to refer to the following two passages, one occurring in paragraph 18 and other in paragraph 19:

18. ...He further submitted that the date of termination of the Petitioner as mentioned thereunder in the reference is 4-7-1993, whereas infact the Petitioners stood sacked terminated on 4-7-1993, 10-7-1993, 12-7-1993 and 14-7-1993. And that being so, this reference could not be adjudicated upon by this Court and further deserved to be returned back after having been quashed for reformulation by the appropriate authority or Government, if it so chooses

again.

19. ...It remains a stark reality that the Petitioner was recorded to be absent w.e.f. 4-7-1993. For all purposes, intents and implications, the termination of service by him started from 4-7-1993 when he was forbidden to have his access into the premises to attend to his daily duties. Simple because the management thereafter indulged in coinage and drafted unmeaningful and ambiguous letters like Ex. RW 3/C and Ex. RW 3/D dated 4-7-1993, 10-7-1993, 12-7-1993 and 14-7-1993, will not give rise to an unrelated conclusion with regard to the termination of his services on the dates mentioned in them. This is a candid and clandestine attempt to defeat the very cause agitated by the Petitioner on a hyper technical ground having no nexus with the ground realities emerging from the evidence adduced during the trial of the reference.

5. Ultimately, the Labour Court passed an award granting the relief in the following terms:

25. In view of the issue-wise findings above, I hereby order reinstatement of the workman-Petitioner retrospectively from 4-7-1993 with full and complete backwages according to the entitlement coupled with the continuance of uninterrupted seniority till date.

6. The Petitioner has filed these seven petitions against the said award. The first contention raised by learned Counsel for the Petitioner is that the reference made by the Government is itself bad, inasmuch as, it has failed to make a reference of the question relating to abandonment of services by the workers. It is to be noted that the notifications issued by the Government in 1994 making references to the Labour Court, were not challenged by the Petitioner at that time. Before the Labour Court, the contention regarding abandonment of services of the workers was raised and the Labour Court framed an issue to consider the said contention. The Labour Court has considered the contention and gave a factual finding against the Petitioner. In such circumstances, we are not inclined to permit the Petitioner to raise the contention as regards the validity of the references at this stage, particularly after it has taken part in the proceedings before the Labour Court and had its say before that Court. Hence the contention is rejected.

7. The second contention is that the Labour Court had no jurisdiction to travel beyond the reference and the only question which it could have decided related to termination of the workers by the Petitioner on 4-7-1993 and it could not have gone into the question of abandonment of the job by the workers. There is absolutely no merit in this contention. It is only at the instance of the Petitioner that the Labour Court has framed the issue regarding the abandonment and considered it on merits. Having failed on the consideration of the Labour Court of the said question, it is not open to the Petitioner to contend that the Labour Court travelled beyond the scope of the reference.

8. Learned Counsel places reliance on the judgment of the Madras High Court in

English Electric Co. of India Ltd. v. Industrial Tribunal, Madras and Ors. 1986 (53) FLR 790. The relevant passage in the judgment reads as follows:

The Industrial Tribunal dealing with a reference made to it has no general or inherent jurisdiction to cover all matters which a party might raise before it for the first time and its jurisdiction is limited only to the dispute referred to it. Section 10(4) of the Act permits the Tribunal to decide only disputes or points referred to it and matters incidental thereto. In *Delhi Cloth and General Mills v. Their workmen* 1967 (14) FLR 176 (SC), the Supreme Court has pointed out that the Tribunal cannot widen the scope of the enquiry beyond the terms of reference. In *Workmen of British India Corporation v. British India Corporation* 1965 (10) FLR 247 (SC), the Supreme Court held that in a reference of demand for increase of wages the question of merger of dearness allowance with basic wages could not be considered by the Tribunal in the absence of a specific term in the order of reference. In a matter which relates to non-employment and where the union comes forth with a specific date with regard to non-employment in order to persuade the Government to make a reference with regard to the dispute relating to non-employment, the dispute can never be of a general nature especially when the dispute relates to non-employment of a large number of employees. There is a world of difference in non-employment on and from 13th October, 1980 and non-employment on and from 16th October, 1980. Once the reference is made to the Tribunal the union could not be permitted to make out an entirely new case than the one which was raised by it and which alone the State Government was persuaded to refer to the Industrial Tribunal. We are, therefore, of the view that the Tribunal committed an error in permitting the union to make out a case at the stage of the trial that the union was entitled to canvass the case that non-employment of the workers had taken place on and from 16th October, 1980. This was not a matter of mere technicality but went to the jurisdiction of the Tribunal as it has no jurisdiction to decide a dispute which has not been referred to it.

9. The ruling in that case will not apply to the facts of the present case as it was the Petitioner who invited the Labour Court to decide that question, which was not referred to it in the order of reference made by the Government. Having invited the Labour Court to decide that question and taking advantage of the permission granted by the Labour Court to adduce evidence on that question, it is not open to the Petitioner to challenge the same in the writ petition under Article 226 of the Constitution of India.

10. It is next contended that issue No. 1 framed by the Labour Court gives the date of termination as 4-7-1993, whereas the dates of termination were different in each case. According to learned Counsel, the Labour Court is in error in directing the Petitioner to reinstate the services of each Petitioner from 4-7-1993 and give full and complete back wages according to the entitlement coupled with the continuance of uninterrupted seniority till the date of the award. It is argued that each worker will be entitled only from the respective dates of termination

and there was no common date of termination for all the workers.

11. There is no merit in this contention. In fact, it is seen from the records that the dates of termination mentioned in the notifications issued by the Government for reference are earlier to either 4-7-1993 or prior to that excepting only in one case. In that case, namely, Suresh Kumar son of Shri Mewa Lai (C.W.P. No. 370 of 1996), the date of termination was given as 12-7-1993. Hence, the award passed by the Labour Court is advantageous to the Petitioner with regard to all the workers excepting one worker. But, as pointed out already, the date of termination with regard to all the workers was actually 4-7-1993 from which date the workers were recorded as absent by the Petitioner as found factually by the Labour Court in paragraph 19 of the award. It is also found by the Labour Court that the Petitioner has tampered with the records and drafted unmeaningful and ambiguous letters bearing different dates. Hence, the contention of the Petitioner in this regard is also rejected.

12. It is rightly pointed out by learned Counsel for the workers that the award passed by the Labour Court after considering the entire evidence on record should not be lightly interfered by this Court while exercising the jurisdiction under Article 226 of the Constitution of India on the basis of hyper-technical contentions. He places reliance on the judgment of the Supreme Court in *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others*, . The Supreme Court said that an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds.

13. The other contentions urged by learned Counsel for the Petitioner are only factual. We are not sitting in appeal over the award passed by the Labour Court and we cannot consider such factual contentions by embarking upon an appreciation of the evidence on record.

14. In the result, we find no merit in these writ petitions and they are hereby dismissed with costs of Respondent No. 3 in each of the writ petition. Counsel fee in each case is Rs. 1,000.