

(1996) 01 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9304 of 1989

Singhal and Co.

APPELLANT

Vs

Hem Raj

RESPONDENT

Date of Decision : 15-01-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1996) 113 PLR 607

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Ram Lal Gupta, for the Appellant; Sabina, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—Is the Labour Court precluded from going into question which are incidental to the dispute referred to it u/s 10 of the Industrial Disputes Act, 1947 ? This is the short question that arises for consideration in this bunch of 11 writ petitions viz. CWP Nos. 5773, 8028, 9301, 9305, 9306, 9997 to 10000 of 1988; C.W.P. Nos. 5881 and 5882 of 1989. Counsel for the parties have referred to the facts as averred in CWP No. 9304 of 1988. These may be briefly noticed.

2. On July 13, 1988, the State Govt. found that there existed a dispute between Mr. Hem Raj, the workman and the Management of M/s Singhal & Company, Goniana Road, Bhatinda. It, therefore, passed an order u/s 10 of the Act whereby the Labour Court was asked to adjudicate upon the following questions:-

"Whether termination of services of Sh. Hem Raj workman is justified and in Order ? If not, to what relief/exact amount of compensation is he entitled ?".

It was also observed that the Labour Court shall consider "the matters relevant to or connected with the dispute as between the said management and the workman for adjudication -." On receipt of notice from the Labour Court, the

management filed a written statement. It inter-alia pleaded that "the relationship of employee and employer does not exist between the parties and as such this Hon"ble Court has got no jurisdiction to try and entertain the present case." Thereafter, on October 4, 1988, the management filed another application by which it requested the Labour Court to frame an issue - "whether relationship of employee and employer exists between the parties ?" The request of the management was declined by the Labour Court vide its order dated October 4, 1988. The Labour Court held that in view of the terms of reference it cannot go into the question whether the workman " is an employee of the respondent." Consequently, it rejected the application. Aggrieved by the order of the Labour Court, the management has approached this Court through the present writ petition. It prays that the order dated October 4, 1988, a copy of which has been produced as Annexure P5 with the writ petition, be quashed. In the alternative, it has been prayed that the State Govt. be directed to recall the reference.

3. Even though the writ petition has been pending for the last more than 7 years, no written statement has been filed.

4. Counsel for the parties have been heard.

5. On behalf of the petitioner, it has been contended that whenever any dispute is referred to the Labour Court, all incidental questions- which arise for adjudication of the dispute have to be considered and decided by it. On the other hand, Ms. Sabina, learned counsel for the respondent has submitted that writ petition against an inter-locutory order passed by the Labour Court is not maintainable. On merits, it has been submitted that the court should not permit the management to raise a question which it had not specifically raised before the appropriate authority at the time of conciliation proceedings.

6. The Industrial Disputes Act was promulgated primarily for the purpose of making provision for the investigation and settlement of industrial disputes. It provides the machinery and procedure for ensuring a speedy resolution of an industrial dispute. Whenever an employee approaches the appropriate Govt. with some grievance, an effort is made to mediate and promote a settlement of the dispute. For this purpose, conciliation officers and Boards of Conciliation are appointed/constituted. Courts of Enquiry and Labour Courts are also constituted. When efforts at mediation fail, the dispute is referred to the appropriate agency. In the very nature of things, it is necessary that the Labour Court goes into the entire gamut of the dispute so as to settle it finally. It can happen that a management may raise the plea that the claimant is not a workman, and as such, he is not entitled to the protection under the Act. It may be equally well pleaded that it is not an industry or that the workman has no cause of action which may be remediable through the proceedings before the Labour Court. Such questions as are merely incidental to the basic dispute referred to the Labour Court are matters which have to be considered and decided for adjudication of the dispute. It is true that the jurisdiction of the Labour Court is limited to deciding the dispute referred to it. However, such matters as are incidental to the

basic dispute have to be examined by the Labour Court. Otherwise, the very working of the Act may become difficult.

7. What is the position in the present case ? The management pleads that there is no relationship of employee and employer between the parties. This is a matter which is strictly related to the dispute referred to the Labour Court. Even the order dated July 1, 1988 by which the dispute was referred to the Labour Court provides that "the matters relevant to or connected with the dispute as between the said management and the workman" are referred for adjudication to the Labour Court. The question whether a relationship of employee and employer exists is not only relevant or connected with the dispute but is purely incidental to the basic issue and had to be determined by the Labour Court.

8. It is true that the Labour Court cannot over-step the terms of the reference is not to be construed as a piece of legislation. When the Labour Court is called upon to examine the validity of an order of termination and the relief to which the employee is entitled is required to be determined, all question which are incidental to this matter, have to be considered. Truly, as has been held by the Apex Court in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, the limited jurisdiction of the Labour Court cannot be "untenably or unduly extended" under the "guise of deciding incidental matters." However, their Lordships were also pleased to hold that "it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the authority and those which cannot be so considered." Even though the dispute in this case related to the jurisdiction of the authority u/s 15 of the Payment of Wages Act, 1936, yet it was held by their Lordships that questions like : Is the applicant an employee of the complainant ? Is there any contract of employer in writing or contract is oral, or the like were incidental question which had to be determined by the Courts. Almost similar is the position under the Industrial Disputes Act. Similarly, in *"The Workmen of the Food Corporation of India v. Food Corporation of India 1985 (1) SLR 625*, it was observed that "the essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there would be, in other words, an employment of his pay the employer and that there should be relationship of master and servant. Unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act." On a perusal of these decisions, it can be legitimately concluded that the determination of the relationship of employer and employee is an essential question incidental to the adjudication of the dispute and that such a question has to be determined by the Labour Court.

9. Still further, in terms of the reference itself, the appropriate Govt. has required the Labour Court to determine relevant matters which are connected with the dispute. The question as to whether or not the relationship of employer and employee exists is not only relevant but even strictly connected with the dispute

and had, thus, to be determined by the labour Court.

10. Learned counsel for the respondent-workmen however, submitted that the writ petition was wholly incompetent. She contended that the petitioners were challenging only inter-locutory orders. In the circumstances of these cases, the contention cannot be sustained. The existence of relationship of employer and employee is an essential pre-condition for finding out as to whether or not the claimant is a workman. It is only after this question is answered that the validity of the order of termination or the exact relief to which he is entitled can be determined. In fact, learned counsel for the petitioners have submitted that if the contention raised by Ms. Sabina is accepted, then the very reference would be liable to be quashed. Mr. Dogra, appearing for the petitioners in some of these cases referred to a decision of the Division Bench of the Bombay High Court in *Sitaraam Vishnu Shirodkar and the Administrator Govt. of Goa and Ors.* 1985 I L.LJ 430 and the Full Bench of the Delhi High Court in *India Tourism Development Corporation, New Delhi v. Delhi Administration, Delhi and Ors.* 1982 LabIC 1209 to contend that the references should be recalled, and that the appropriate Govt. should be called upon to consider the matters afresh. Such a course if adopted would unduly delay the adjudication of the dispute. In fact, on account of the pendency of these petitions, the Labour Court has not been able to proceed further with the matter. If the original orders of reference are recalled, the workmen may be put to still greater hardship. Consequently, in the circumstances of these case, it does not appear to be just and fair to recall the orders of reference or to direct the Govt. to reconsider the matter. It appears clear that the determination of the question as raised on behalf of the petitioners is clearly incidental to the dispute referred to the Labour Court for adjudication. The Labour Court should examine the matter.

11. It was also contended on behalf of the respondent-workmen that the petitioners having not raised a dispute regarding the existence of relationship of employer and employee before the appropriate Govt. they cannot be permitted to do so through the present proceedings. As at present, such an objection cannot be accepted. Firstly, no written statement having been filed and such a plea having not been raised, it would not be fair to hold on the present material that the petitioners had not raised this issue before the appropriate authority. Even if it is assumed that the plea was not raised at the time of conciliation proceedings, it would not be just and fair to hold that such an objection cannot be raised before the Labour Court.

12. In view of the above, it is held that the question as to whether or not there is a relationship of employer and employee between the parties, is one which is incidental to the dispute referred to the Labour Court. It has to be considered and decided by the Labour Court after permitting the parties to lead evidence.

13. In CWP Nos. 8028 and 9306 of 1988, the plea raised on behalf of the management was slightly different. It was contended that the employer had not terminated the services of the workers. On the contrary, they had abandoned the

job. The Labour Court has even refused to go into this question. This was not fair. The question as to whether or not the management had terminated the services of the workmen is incidental to the dispute referred to the Labour Court. It is consequently to be determined after giving the parties an opportunity to adduce evidence.

14. Even in CWP No. 5881 of 1989, the dispute is slightly different. The Labour Court rejected the application filed by the petitioner-management by which it had prayed for the framing of an issue as to whether relationship of employer and employee exists between the parties. The Labour Court rejected this application. It further observed that the employer having not pleaded any ground for termination of services the workman was entitled to reinstatement with full back wages. In view of the fact that an essential question has not been considered, the award cannot be sustained. It was for the Labour Court to determine as to whether or not the relationship of employer and employee existed between the parties. In terms of the decision of their Lordships of the Supreme Court in the case of Food Corporation of India (*supra*), this question was an essential pre-condition for holding that the employee was a workman. Accordingly, the award given by the Court on February 7, 1989, a copy of which has been produced as Annexure P4 with the writ petition is liable to be quashed and is accordingly set aside.

15. No other point has been urged.

16. In view of the above, the writ petitions are allowed. The Labour Court is directed to go into the matter afresh and decide in accordance with the above observations. In the circumstances of these cases, there will be no order as to costs.