
(2006) 07 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14543 of 2003

Smt. Kitabo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12(5), 2A

Citation : (2007) 113 FLR 555 : (2006) 144 PLR 630

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Advocate : J.S. Virk, for the Appellant; S.K. Sharma, for Respondent Nos. 1 and 2 and J.S. Sathi, for the Respondent

Final Decision : Allowed

Judgement

Arvind Kumar, J.—The challenge in the present petition is to the orders/letters dated 24.2.2003 and 13.5.2003 whereby the appropriate government declined to refer the dispute raised by the petitioner-workman to the Labour Court.

2. It is averred by the petitioner that on 8.2.2001, she was appointed as Peon by respondent No. 3 on daily wages. She served as such up to 6.2.2002 when her services were terminated illegally by respondent No. 3. Challenging her termination, the petitioner raised an industrial dispute before respondent No. 2 by serving a demand notice (Annexure P-1) u/s 2A of the Industrial Disputes Act, 1947 (hereinafter called as the Act). Respondent No. 3 contested the demand notice by submitting a reply (Annexure P-2) thereto. Their stand was that the petitioner-workman was never appointed as a Peon by the Bank, as such, rejection of demand notice was sought. The petitioner controverting the stand taken by the Bank in its reply and re-asserting that of demand notice, filed rejoinder to it. Then conciliation proceedings were taken before respondent No. 2 but the same resulted into naught. On receipt of failure report, the appropriate government passed the impugned order dated 24.2.2003, which on reproduction reads as under:

The disputant Smt. Kitabo w/o Shri Subhash Chand failed to establish her claim of employment during the period from 8.2.2001 to 6.2.2002 with the Punjab and Sind Bank. Hence the dispute raised does not subsist.

3. Thereafter, on 16.4.2003, the petitioner got served a legal notice for review of the order dated 24.2.2003. While relying upon the vouchers vide which the workman was paid salary, it has been submitted that there exist employer-employee relationship between the parties and that the question whether or not the services of the workman has been terminated illegally has to be decided by the Labour Court. Thus, reference of the dispute to the Labour Court was sought.

4. But this time also the petitioner workman meted with the same fate and her request for reference of dispute was turned down by the appropriate government vide the impugned order dated 13.5.2003 on the following lines:

...2. The various points made in the notice dated 16.4.2003 has been considered in detail. It has been stated that the appropriate Government has adjudicated the case on merits even though the Govt. has not power to decide such issues. However, this is not factually correct as the appropriate Govt. has considered the matter in order to determine whether a dispute on the claim made by the disputant exists for adjudication by the Labour Court. In accordance with the power given u/s 12(5) read with Section 10 of the I.D. Act, the appropriate Govt. has to satisfy existence of a dispute between the parties and in order to decide existence of an Industrial Dispute, the disputant has to prima facie establish her claim. However, in the present case, the claim of engagement during the period from 8.2.2001 to 6.2.2002 could not be established and the copies of the paid vouchers enclosed with the notice dated 16.4.2003 do not show that she was employed continuously during the above period. In the circumstances, it is found that the dispute raised by Smt. Kitabo lacked prima facie merit for reference. It is, therefore, regretted that this dispute cannot be referred to the Labour Court for adjudication.

5. Dissatisfied with the same, the petitioner has filed the instant petition.

6. Upon notice, respondent No. 3 filed the written statement resisting the pleas raised by the petitioner.

7. We have heard learned Counsel for the parties and have perused the paper book carefully.

8. The appropriate Government cannot act as a judge and deal with the merits of the case while dealing with the reference sought by the workman for determination of lis by the appropriate forum, be it Labour Court or the Industrial Tribunal. The decision on merit is always in the exclusive domain of the Industrial Tribunal or the Labour Court, as the case may be. In the instant case, the previous order dated 24.2.2003, reveals that the reference was declined by the appropriate government on the ground that the workman has failed to establish her employment during the period from 8.2.2001 to 6.2.2002, as such, in a way

denied the employer-employee relationship between the parties. However, the appropriate government vide subsequent order dated 13.5.2003, in a way accepted the employer-employee relationship between the parties, however, declined the reference on the ground that the workman-petitioner could not establish of having worked continuously or with breaks at her own end or by the artificial breaks by the management being question of fact was not within the domain of the government to adjudicate upon. It is only within the ambit of the jurisdiction of the Industrial Tribunal or the Labour Court constituted under the Act to determine this dispute. The Government cannot encroach upon the functions which have been specifically entrusted to the Industrial Tribunal under the Act. It was held by the Hon''ble Supreme Court in *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, , that Section 10 of the Act permits appropriate Government to determine whether dispute "exists or is apprehended and then refer it for adjudication on merits. The demarcated functions are (1) reference; (2) adjudication. Government should be very slow to attempt an examination for the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Sections 10 and 12(5) of the Act nugatory." In this context further reliance can be placed on the judgments of Hon''ble Apex Court in the cases of *Ram Avtar Sharmu v. State of Haryana* 1985 (2) S.L.R. 57 (S.C.) and *Chemicals and Fibres of India Ltd. Vs. Union of India (UOI)*, .

9. Considering the law on this point, we find that the impugned order passed by respondent No. 1 is wholly unsustainable.

10. For the foregoing reasons, the writ petition is allowed. The impugned orders dated 24.2.2003 and 13.5.2003 passed by the appropriate Government are set aside. The appropriate government shall pass orders afresh on the demand notice of the petitioner-workman, considering the law Laid down by Hon''ble the Apex Court as well as the discussion made by us in the preceding para of this judgment. The parties are left to bear their own costs.