

(2015) 09 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : CWP No. 8017 of 2012

The Chairman Market Committee and Others	APPELLANT
Vs	
Harish Kumar	RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 38, 39(a), 43
Industrial Disputes Act, 1947 — Section 2(s), 25-F, 25-G, 25-H

Citation : (2016) 148 FLR 160 : (2015) 4 LLN 115

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Navlesh Verma, for the Appellant; C.S. Thakur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J—This writ petition under Article 226/227 of the Constitution of India is directed against the award passed by the Industrial Tribunal-cum- Labour Court, Shimla (for short "Tribunal") on 24.7.2012.

The facts, in brief, may be noticed.

2. The following reference was sent by the appropriate Government for adjudication to the Tribunal:

"Whether the termination of services of Shri Harish Kumar S/o Shri Surjit Singh by the (1) Chairman Market Solan, H.P. (2) Secretary, Market Committee, Solan, H.P. w.e.f. 21.10.2003 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief and service benefits and amount of compensation the aggrieved workman is entitled to?"

3. The workman (respondent herein) filed a claim petition stating therein that he was appointed as helper by the petitioners herein on contractual basis on 3.8.2002. The contract was renewed for a period of one year w.e.f. 21.10.2002

to 20.10.2003 and had thus completed 240 days in a calendar year. However, his services were illegally terminated by the petitioners w.e.f. 21.10.2003, whereas his juniors had been retained.

4. The petitioners in their reply did not dispute the averments made in the petition but only stated that the appointment of the workman (respondent) was purely on temporary and since the services of the workman were no longer required, his services were terminated by giving one month's notice and, therefore, there was no violation of the provisions of Section 25-G and 25-H of the Industrial Disputes Act.

5. On the pleadings of the parties, the following issues came to be framed:

"1. Whether the termination of services of petitioner w.e.f. 21.10.2003 is in violation of the provisions of Industrial Disputes Act, 1947?OPP

2. If issue No. 1 is proved in affirmative to what relief the petitioner is entitled to? ...OPP

3. Relief."

6. On the basis of the pleadings and evidence, the learned Tribunal held that the services of the petitioner had been wrongly and illegally terminated by the petitioners without complying the provisions of the Industrial Disputes Act, 1947. After arriving at such a conclusion, the workman was held entitled for reinstatement in service with seniority and continuity with effect from the date of his termination, but without back wages. The award has been challenged by the petitioners on various grounds as taken in the petition.

7. I have heard learned counsel for the parties and have gone through the records of the case carefully.

8. At the outset, it may be observed that while adjudicating upon the case of the present kind, this Court is duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. Once the Labour Court has exercised the discretion judiciously, the High Court can interfere with the award of the Labour Court only if it is vitiated by any fundamental flaws and not otherwise. (Refer: Harjinder Singh Vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116 : (2010) 124 FLR 700 : (2010) 1 JT 598 : (2010) 2 LLJ 277 : (2010) 1 SCALE 613 : (2010) 3 SCC 192 : (2010) 1 SCC(L&S) 1146 : (2010) 1 SCR 591 : (2010) 2 SLR 15 , K.V.S. Ram Vs. Bangalore Metropolitan Transport Corpn.(2015) 2 AD 202 : AIR 2015 SC 998 : (2015) 144 FLR 994 : (2015) 1 LLJ

257 : (2015) 1 SCALE 436 : (2015) 2 SCT 81 : (2015) 2 SLJ 197 : (2015) 1 SLJ 400 , Jasmer Singh Vs. State of Haryana(2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 .)

9. It has been the well established principle that industrial adjudication is not merely adjudicating contractual rights based on strict principles of law. The higher courts can interfere against the awards passed by the Labour Courts only if there are manifest errors or the order is contrary to the provisions of law and the order has been passed without jurisdiction and that is the scope of jurisdiction of this Court under Article 226 of the Constitution of India. It was held that the High Court cannot sit on appeal over the findings recorded by the competent tribunal by converting itself into a court of appeal.

10. In a plethora of judgments, while deciding about the jurisdiction of the Hon"ble Supreme Court under Article 226 of the Constitution of India, the Hon"ble Supreme Court has held that in a writ of certiorari, it is not merely an error but it must be something more which must be manifest on the face of the records and that alone gives jurisdiction to interfere with the awards. When once the tribunal having jurisdiction decides the question and comes to a finding of fact, it is certainly not open to the High Court to interfere with such finding of fact by re-appreciation of evidence unless the finding is perverse and the award passed is wholly based on unwarranted evidence. Therefore, one has to see the overall view of the award passed by the Labour Court while dealing with the writ of certiorari.

11. While holding that the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide but while exercising it great care has to be taken, especially in respect of the orders of the tribunals constituted under the special legislation, the Hon"ble Supreme Court in Sadhu Ram Vs. Delhi Transport Corporation, AIR 1984 SC 1467 : (1983) LabIC 1516 : (1983) 2 LLJ 383 : (1983) 2 SCALE 136 : (1983) 4 SCC 156 : (1983) 3 SCR 725 : (1983) 2 SLJ 372 has observed as follows:

"3. We are afraid the High Court misdirected itself. The jurisdiction under Art. 226 of the Constitution is truly wide but for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of

the Labour Court and hold that the workman had raised no demand with the management. There was a conciliation proceeding, the conciliation had failed and the Conciliation Officer had so reported to the Government. The Government was justified in thinking that there was an industrial dispute and referring it to the Labour Court."

12. By applying the above said broad principles of law laid down categorically, I am not able to see any manifest error in any of the awards passed by the Labour Court. While deciding about the jurisdictional fact and the interference by the higher courts against the orders of the inferior courts or tribunals, Lord Esher, M.R., in an illustrative judgment in *Queen v. Commissioners for Special Purposes of Income Tax (t)*, [1888] 21 QBD 313 has made the following remarkable assertion:

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by an Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature is establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned that it is an erroneous application of the formula to say that the tribunals cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction. The above said principle of law is an universally acclaimed one."

13. Bearing in mind the aforesaid principles, it would be seen that it was after evaluating the oral and documentary evidence on record that the learned Tribunal passed the award.

14. The workman (respondent) stepped into the witness box and deposed that he was engaged by the petitioners on contractual basis on 3.8.2002 which was renewed w.e.f. 21.10.2002 to 20.10.2003. He further deposed that vide order dated 22.9.2003 his services were illegally terminated whereas his juniors were retained.

15. Shri Bhanu Sharma, Secretary Market Committee, Solan appeared as RW-1 and deposed that though the workman had worked for 240 days and his services were terminated in terms of the contract after serving one month's advance notice.

16. The learned Tribunal held that the services of the petitioner had been terminated in violation of Section 25-F of the Industrial Disputes Act, though, it was not proved on record that the juniors of the workman had been retained.

17. Learned counsel for the petitioners has assailed this finding on the ground that the provisions of the Industrial Disputes Act were not at all applicable to the instant case as the condition of the services of the workman would be regulated by the contract. This argument to say the least is fallacious because admittedly prior to making reference to the Industrial Tribunal-cum-Labour Court, the respondent herein had filed the Original Application No. 247 of 2004 before the learned Administrative Tribunal, which was decided vide order dated 24.10.2005 wherein it was held that the matter was covered under the Industrial Disputes Act. Admittedly, not only the said order has attained finality, but thereafter the petitioners even served with demand notice, which was sent to the Labour-cum-Conciliation Officer and after failure of conciliation the matter was ultimately referred to the Industrial Tribunal-cum-Labour Court.

18. It is evident from the records that not only was the reference ever assailed but even the question of jurisdiction of the Industrial Tribunal-cum-Labour Court had ever been questioned. If that be so, then it does not lie in the mouth of the petitioners to contend that the provisions of the Industrial Disputes Act were not attracted to the instant case. After all, it is the workman as defined in Section 2(s) of the Act whose case alone can be referred by the appropriate Government and thereafter adjudicated by the Industrial Tribunal-cum-Labour Court.

19. In view of the aforesaid discussion, I find no merit in this petition and the same is accordingly dismissed, so also the pending applications, leaving the parties to bear their own costs.