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**(1993) 07 AHC CK 0021**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 1024 of 1991**

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|------------------------------------------|------------|
| U.P. State Electricity Board and Another | APPELLANT  |
| Vs                                       |            |
| State of U.P. and Others                 | RESPONDENT |

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**Date of Decision :** 19-07-1993

**Acts Referred:**

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

**Citation :** (1994) 2 LLJ 1008 : (1993) 3 UPLBEC 2065

**Hon'ble Judges :** B.L. Yadav, J

**Bench :** Single Bench

**Advocate :** Tarun Agarwal, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

. B.L. Yadav, J.—Whether change of the date pertaining to termination of service of the workman u/s 4K of U.P. Industrial Disputes Act, 1947. (compendiously the Act) would amount to the supersession of earlier Reference is the short question that falls for determination in the present petition filed by the petitioners, the employer, seeking the relief for issuance of a writ of certiorari quashing the order of the Labour Court dated June 22, 1990 (Annexure No. 8) and to quash the order of Reference dated February 21, 1989 (Annexure No. 5)

2. The factual matrix of the case is that the respondent No. 3 workman moved an application u/s 2-A of the Act, before Regional Conciliation Officer {Annexure No. 1) with the averments that he was employed in 1973, in Panki Thermal Power Station, Panki, Kanpur, (Petitioner No. 2) and was confirmed as a workman. He was injured while on duty on April 12, 1977 and was sent for treatment. He recovered and reported for duty, but was told that his services were terminated on the same day when he met up with an accident. He made applications to the relevant superior officers who assured orally but nothing positive was done. Ultimately he made an application to the Chairman of the U.P. State Electricity Board. The other workmen namely, Ram Gopal Durga pal etc. being junior to the petitioner continued to work and were confirmed. There are

vacancies in the Panki Power House against which he could be engaged, but he was refused employment and the termination of his services on April 12, 1977 was illegal and was against the provisions of the Act and Rules and was in violation of the principles of natural justice. Consequently, he made a prayer to be reinstated from the date of termination with back wages and other consequential benefits.

3. The Regional Conciliation Officer submitted his report to the State Government for making a Reference u/s 4-K of the Act. The State Government being of the opinion that prima facie the industrial dispute exists and consequently made a Reference u/s 4-K of the Act to the effect "Whether the employers were justified in terminating the services of the workman Ramadhar on April 12, 1977 and if not, to which relief the workman was entitled" (Annexure No. 3 pages 32 to 36 of the paper book). The Panki Thermal Power Station and U.P. Electricity Board, Kanpur, the employers, filed written statement with an averment in para 7, that the workman has worked beyond April 12, 1977, but did not appear since September, 1977. Para 7 of the Written Statement of the petitioners, the employers, reads:-

" That again he worked for some days between July 1977 and August, 1977 but from the month of September, 1977 he did report for work as per reference order the services of the workman concerned were terminated w.e.f. April 12, 1977 which is not correct because the incumbent worked as casual labourer even after April 12, 1977. The order of reference is therefore defective and bad in law."

4. It appears in view of the aforesaid averments in paragraph 7 of the Written Statement of the employers, the State Government was of the opinion that the industrial dispute exists, but changed date of termination of services from April 12, 1977 to September 1, 1977 in Reference (Annexure No. 5). Thereafter, an objection was filed by the employer (Annexure No. 6) before Presiding Officer, Labour Court-2, Kanpur, to the effect that change of date in the Reference was not mere a correction or rectification of clerical error, but has drastically changed aiming of the cause of action, which may result in totally different award from the one which could be expected under the earlier Reference and this amounts to the supersession of the earlier Reference. After affording opportunity of hearing to the parties concerned objection of the employer, the petitioners, was overruled by the impugned order (Annexure No. 5). It was held by the Labour Court that the State Government has power to make reference, it has also got power to change the date of retrenchment or the termination of services. Against this order the present petition has been filed with the aforesaid relief.

Sri Tarun Agarwal, learned counsel for the petitioners, contended that the State Government has no power of review to supersede earlier Reference and substitute it by subsequent Reference and that the change of date of the termination of services of the workman from April 12, 1977 to September 1, 1977 was the change of date of the cause of action.

Sri S.C. Shukla, advocate, has filed caveat on behalf of the respondent No. 3, the workman. By the order of this Court dated January 23, 1991, the parties were directed to exchange affidavits.

5. Counsel of both parties suggested that the petition may be disposed of on merits. This is how this petition is being disposed of on merits.

6. Sri. S.C. Shukla, learned counsel for the workman on the other hand, urged that as the petitioners being employer had raised objection in their written statement (vide Annexure No. 4 and paragraph 7) that services of the workman was not terminated on April 12, 1977, rather he worked subsequent to that date as casual labourer and from the month of September he did not report for work. This obviously meant that according to the employers the workman did not ] work since September and prior to that he was in service. Taking this to be a correct fact, as the existence of the industrial dispute was not doubted, hence the State Government changed the date of termination from April 12, 1977 to ] September 1, 1977 in the Reference. This could not be said to be either supersession of the earlier Reference nor it could be said that the industrial dispute ceased to exist. As the industrial dispute continued to exist the change of date in the Reference would not amount to review or super session of the earlier Reference. There was no lack of power or authority for making the Reference. Reliance was placed on *South India Estate Labour Relation Organisation v. State of Madras* 1954 I L.L.J. 8 *Mangharam (J.B.) and Co. Vs. Kher (K.B.) and Others*, *Manager, Rastradoot Dainik Press v. R.S. Karamchari Sangh, Jaipur and Ors.* 1977 (35) F.L.R. 114.

7. Having scrutinized submissions of the learned counsel for the parties, point for determination is whether the State Government has power to change the date about termination of service of workman, and if so, can it amount to supersession of the earlier Reference or review?

8. Before proceeding further, it is better to notice certain cardinal principles of interpretation. The Act and the Rules are not simple piece of legislation; rather they are statutes of predominant social nature and approach to such legislation has to be made in that light. The Court has to take a broad view of the matter and also the policy of the statute in question. In such statutes purposive approach must be made to achieve the social ends envisaged by the legislature. The Scheme of the Act has to be considered as integrated whole (See *Pandey Orson Vs. Ram Chander Sahu and others*, . *Summers v. Seaford Corporation* (1943 A.C.. 283 , *Okereka v. Brant London Borough Council* (1967) I Q.B. 43, *Brown v. Brash and Ambrose* (1948) I AER 922.

9. Section 4-K of the Act confers administrative power on the State Government to make a Reference provided there exists an industrial dispute or the same is apprehended. No doubt there must be some material before the Government, which could lead to the formation of the opinion before making a Reference. The order to be passed by the Government is administrative in nature and the

adequacy or sufficiency of the material on which the Government has formed the opinion is beyond the pale of judicial scrutiny. In case a party challenges the Reference, it is open to it that what was referred was not an industrial dispute. In the present case, learned counsel for the petitioner did not challenge the existence of the industrial dispute, rather he challenged the change of date from April 12, 1977 to September 1, 1977 about termination of the services of the workman. The existence of the industrial dispute was accordingly admitted. The change of date was also not made by the State Government suo motu, rather it was made on the suggestion of the employer (vide para 7 of the written statement Annexure No. 4), as the petitioners, the employer, stated in the aforesaid paragraph that the workman continued to work on daily wages even after April 12, 1977 and did not work since September 1977, hence the date was changed in the Reference from April 12, 1977 to September 1, 1977. This could not be said to be the review of the earlier Reference. It appears that the employer adopted a device to defeat the first Reference on the technical plea that the workman continued to work after April 12, 1977 till September 1977. This was with a view to frustrate the proceedings before Labour Court.

10. This is how the approach of the Court in such matters has to be purposive to achieve social ends while interpreting a social beneficent legislation. The power of the State Government to make a Reference u/s 4-K of the Act is absolute provided there exists industrial dispute. In the instant case the existence of industrial dispute is not denied by the employer. There was no specific power under the Act and Rules about amendment of the Reference or change in date about retrenchment or termination of services of the workman.

11. The Latin maxim "cut juris dicto data est ea quoque concessa esse videntur sine quibus jurisdiction explicari non potest" connotes that to whomsoever a jurisdiction is given, those things also are supposed to be granted without which the jurisdiction cannot be properly exercised.

12. I am conscious that the Latin maxim or precedence, as the case may be, may not be cited mechanically, but it may be referred only when the circumstances so required and it becomes imperative to explain certain aspects of the matter. In the present case, no doubt, the power of Reference u/s 4-K of the Act was an administrative power to refer certain disputes to adjudication in cases there exists industrial disputes. In case it is so justified, the previous order of reference can be amplified or supplemented or to a certain extent modified or certain changes in the date etc. according to the nature of the Reference, can be made. In other words, unless the Government has discretionary power to amend the previous order of reference or supplement the same, the power or jurisdiction in consequence of the previous order making Reference can not be effectively exercised. In the instant case, as a specific plea was taken in the Written Statement filed by the petitioners, the employer, that even after April 12th, 1977, the date of alleged order of termination of workman, he continued to work and received wages even beyond 12th April, 1977 till 1st of September

1977, but from the month of September 1977 he did not report for duty. Unless the Reference was amended by change of date of termination of services of the workman from April 12, 1977 to September 1, 1977, the purpose of the Reference would have been frustrated. The employer could challenge the same that the Reference's date was not correct. Now, when the date of reference has been changed in accordance with the case set up by the employer, the petitioners, again an objection has been taken in the 2nd order making amendment in the date of termination of service will amount to supersession of the earlier Reference. These are just delaying tactics adopted by the employer to delay the proceedings in the Reference or in the adjudication and to exhaust the workman. In social beneficent legislation such frivolous objection with an ulterior motive need not to be encouraged.

13. There is a negative approach in the matter as to whether by change of date of termination of service is consistent with the case set up by the employer in his Written Statement. It cannot be said that the State Government by changing the date about the termination of service of the workman, has contravened or violated any of the provisions of the Act or Rules made thereunder.

14. What could be challenged by the petitioners was that there exists industrial dispute and that the Tribunal has no jurisdiction. In the present case, the existence of the industrial dispute was not challenged, hence just change of date in the Reference could not lead to the conclusion that there was no industrial dispute at all. A change in the date was necessitated on account of the case set up in the Written Statement by the employer. It is upon to the Government to issue fresh notification amending the point in dispute in the previous matter or supplement certain points for the decision of the Tribunal. It could not be said that the procedure adopted was in any way in violation of any statutory provisions. In my opinion even in making the Reference u/s 4-K of the Act, the State Government has supplementary power with a view to do complete justice between the parties, to amend or modify the earlier Reference or to make change in the date about the termination of services of the workman. Particularly, with reference to the positive case being taken by the employer, the petitioners, under para 7 of the Written Statement. The change in the date of termination of the service necessitated in view of the case set up by the employer under para 7 of the Written Statement. These changes could not be said to be contradictory as the change in the date was necessitated in view of the case set up by the workman. It was made to achieve the ends of justice. The petitioners have not challenged the power of the State Government to make Reference nor they have challenged the existence of the industrial dispute. As long as the industrial dispute exists, the Reference is valid, even though the date of termination of service of the workman or retrenchment of the workman has been changed.

15. The matter could be viewed from some other angles. The provision of Section 4-K of the Act has been crunched in language having very wide sweep. Every

expressions including "at any time" clearly indicated the intention that once the State Government has made Reference, it could also amend the same, it would amount not supersession of the earlier Reference. The expression "at any time" was employed deliberately by the legislature to clarify that it is open to the State Government to make Reference even though earlier the same has been refused and in case it has been made earlier, the same can be amended or supplemented. The subsequent amendment or modification or change of date about the termination of the services of the workman could not amount to either review of the earlier Reference or supersession of the same. After declining to make Reference in case there is any fresh material, the Government can again take it into account. In case, there is no existence of the industrial dispute, the Reference cannot be made again as necessary corollary and in case the Reference has been made in the exercise of the administrative power after being satisfied that the industrial dispute existed and the same continued, the State Government could also make amendment or modification or amplification by changing the date about the termination of services.

16. Reverting to the cases relied up on behalf of the workman, suffice it to say, that *South India Estate Labour Relation Organization v. State of Madras and Ors.* (supra) was a case decided by the Division Bench of Madras High Court, where the scope of Section 10(c) of the Industrial Disputes Act (Central) was considered. It was ruled that the Government has power to amend the terms of Reference.

17. *Mangharam (J.B.) and Co. v. Kher (K.B.) and Ors.* (supra) was a case decided by the Division Bench of the then Madhya Bharat (Gowalior Benph) where the question was whether the reference made u/s 10(4) of the Industrial Disputes Act, could be amended and it was ruled that the Government has very wide discretion to amend the reference already made.

18. Similarly, *Manager, Rashtradoor Dainik Press v. R.S.P. Karamchari Sangh, Jaipur and Ors.* (supra) was a case where after considering the case it was held that pending adjudication the Reference can be amended and the Government has sufficient power to amend the Reference u/s 10(1)(d) of the Industrial Disputes Act (Central).

19. I am accordingly of the considered opinion that the question posed has to be answered in negative and the inevitable result is that the change of date in Reference in pursuance of the case set-up by the employer under para 7 of the Written Statement would not amount to supersession of the earlier Reference; rather it was just an exercise of the administrative power by the State Government with a view to do complete justice between the parties, but change in the date would also not amount to review of the earlier Reference.

20. In view of the discussion made herein before, I do not find any substance in the submissions of the learned counsel for the petitioners. The petition fails and the same is dismissed without any order as to costs. On account of pendency of

this writ petition in this Court, the matter before Labour Court was held up. What is required is expedition. The Labour Court is directed to dispose of the matter within two months ostensibly from the date a certified copy of this order is furnished before him.