(1999) 03 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5032 of 1998

Bhuna Co-operative Sugar Mill		APPELLANT
	Vs	
Presiding Officer, Industrial Tribunal-cum-Labour Court and Another		RESPONDENT

Date of Decision: March 23, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 25F

Citation: (1999) 122 PLR 383

Hon'ble Judges: N.K. Agrawal, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: Govind Goel, for the Appellant; N.K. Nagar, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

We have a bunch of eight writ petitions. The primary question that arises for consideration in these cases is Does Section 102 of the Haryana Co-operative Societies Act, 1984, which provides for reference of disputes for arbitration excludes the provisions of the Industrial Disputes Act, 1947?

2. The petitioners in these cases are different Co-operative Societies. The respondent-workman had been engaged to work on different posts. Learned counsel for the parties have referred to the factual position in CWP No. 5032 of 1998. This may be briefly noticed.

3. The workman had been appointed as a Sweeper on January 15, 1992. His services were terminated on June 30, 1993. He had raised an industrial dispute and complained that no retrenchment compensation had been paid. No notice had been given and the provisions of Section 25F, 25G & 25H had been violated. The Labour

Court has found that the services of the workman had been terminated in violation of Section 25F. It has ordered his reinstatement with 25% back wages. The petitioner challenges the order on the ground that the Labour Court had no jurisdiction to go into the matter. Is it so ?

4. Mr. Govind Goel, learned counsel for the petitioner, contends that Section 102 of the Co-operative Societies Act provides a complete mechanism for the settlement of all disputes between a Society and its employees. The workman could have sought the redressal of his grievance, if any, by seeking a reference u/s 102 of the Co-operative Societies Act. On having failed to do so, he could not have claimed any relief on the ground that the provisions of Section 25(F) of the Industrial Disputes Act, 1947, had not been complied with. Learned counsel has referred to the decisions of their Lordships of the Supreme Court in R.C. Tiwari v. M.P. State Cooperative Marketing Federation Ltd. and Ors., AIR 1997 Supreme Court 2652 and Sagarmal and Anr. v. District Sahkari Kendriya Bank Ltd. Mandsaur, 1997(9) Supreme Court Cases 354. The claim made on behalf of the petitioner has been controverted by the learned counsel for the respondent-workman.

5. The short question that arises for consideration is - Does Section 102 of the Haryana Co-operative Societies Act, 1984, exclude the operation of the Industrial Disputes Act, 1947 ?

6. This issue had been considered by a Full Bench of this Court in Sonepat Co-operative Sugar Mills Ltd., Sonepat v. The Presiding Officer, Labour Court, Rohtak (1987 91 P.L.R. 77 . Their Lordships were pleased to held as under:-

"As a result of our discussion aforesaid .... the conclusions may be summarised thus:

(1) For the detailed discussion in our judgment of the even date in Income Tax Reference No. 219 of 1980, it is held that the Labour Court would not be divested of the references which have been made or are pending before it qua the employees of the Co-operative Societies by the later amendment in the Haryana Co-operative Societies Act whereby such disputes are purported to have been taken out of its jurisdiction;

(2) That the Legislature did not intend to include in the expression establishment'' industrial disputes for the adjudication of which the Parliament has enacted the Industrial Disputes Act;

(3) That the Industrial Disputes Act is a special enactment dealing with a special subject of industrial disputes and special provisions have been made in the statute for setting up Tribunal qualified for adjudicating upon them. Therefore, an industrial dispute between a Co-operative Society under the Co-operative Societies Act and its workmen under the law has to be referred to an Industrial Tribunal set up under the Industrial Disputes Act; and

(4) That the provisions made in section 128 of the Co-operative Societies Act, 1984, to the extent they exclude the jurisdiction of the Industrial Tribunal and Labour Court are unconstitutional and hit by the provisions of Article 14 of the Constitution."

A similar view was taken by a later Full Bench in The Ambala Central Co-Operative Bank Limited Vs. The State of Haryana and Others, .

7. In view of the above decision of the Full Bench the question as posed above has to be answered in the negative. We are bound by the decision of the Full Bench we respectfully follow it.

8. Mr. Goel has referred to the decision in R.C. Tiwari''s case (supra). In paragraph 2 of this judgment it has been specifically observed by their Lordships that the workman had been dismissed from service "for his misconduct. Thereafter, he sought a reference under the Societies Act which was confirmed and became final. It was in this situation that their Lordships were considering as to whether or not the Labour Court had the jurisdiction to intervene. They found that "Admittedly, there is a finding recorded by the Dy. Registrar upholding the misconduct of the petitioner. That constitutes res judicata.....a Tribunal, constituted under the Societies Act is given special jurisdiction.....Thus, we find that the High Court is well justified in holding that the Labour Court has no jurisdiction to decide the dispute once over and the reference itself is bad in law". Such is not the position in the present case. No authority under the Cooperative Societies Act had been approached by the workman. No binding award had been given. No res judicata is involved.

9. In fact, in the present case it appears that the petitioner had never raised the objection with regard to the jurisdiction of the Labour Court at any time prior to the filing of the present writ petition. In this situation, we do not consider it proper to allow the petitioner to raise the point at this stage. We are satisfied that if the petitioner had raised such an objection as is now sought to be raised, it would have been possible for the respondent-workman to bring on record the relevant material to show that there were no statutory rules governing the conditions of his service and that the provisions of the Industrial Disputes Act were, thus not excluded. The question of jurisdiction of the Labour Court having not been raised earlier, it would not be in the interest of justice to allow it to be raised now.

10. Thus, in view of the above we hold that:-

a) in view of the Full Bench decision, the jurisdiction of the Labour Court is not excluded.

(b) The question of jurisdiction had not been raised by the petitioner before the Labour Court or at the time when a reference was made. The petitioners had continued to sit on the fence. They had taken a chance. It is only when the petitioners have lost the cases that these have chosen to raise the objection of

jurisdiction. In the exercise of our jurisdiction under Article 226 of the Constitution, we will not allow the petitioners to do so.

11. The factual position in the present case is totally different from that in R.C. Tiwari''s case (supra). Consequently, the petitioner can derive no advantage from this decision.

12. Faced with the situation, learned counsel has referred to the decision of their Lordships of the Supreme Court in Sagarmal''s case (supra). This was also a case arising out of a disciplinary enquiry. Thus, the cause of action was based on the violation of the peculiar conditions of service governing the employee. Such is not the position in the present case. Herein, the workman complains that the action of the petitioner Management is in violation of the provisions of the Industrial Disputes Act. Thus, he had to seek the remedy under the particular law.

13. It was then contended that the factual position in three of the cases was peculiar. With regard to C.W.P. No. 15776 of 1998, it was contended that the wolkman had been appointed as a Carpenter in the year 1992. His services were terminated after he had worked for about one year and six months in the year 1993. The necessity had arisen as the post of Carpenter had not been sanctioned by the Registrar. In this situation, learned counsel contends that the relief of reinstatement could not have been granted to the workman.

14. We have perused the award. We find that this aspect of the matter has been considered by the Labour Court. It has been found that the petitioner had been appointed as a Carpenter. His services had been terminated without complying with the provisions of Section 25F of the Industrial Disputes Act. The work of a Carpenter "was very much there with the respondent and it was very important. Despite it, his services were, suddenly terminated". Nothing has been pointed out to show that this finding is incorrect. It has also been found by the Labour Court that Ishwar Singh had been appointed in place of the workman. Resultantly, we do not find any ground to interfere.

15. Learned counsel has then referred to C.W.P. No. 16260 of 1998. It is contended that the workman was posted at Meerut when his services were terminated. Thus, the Labour Court at Hissar had no jurisdiction.

16. It is the admitted position that the order of termination had been passed in the Head Office at Hansi. The mere fact that the order was communicated to the workman at Meerut did not result in excluding the territorial jurisdiction of the Court at Hissar. At best the workman could have invoked the jurisdiction of the Court at Meerut as well as the Labour Court at Hissar. He could choose one of the two available forums. Still further the Labour Court has found as a fact that I the workman used to "get salary after coming to the Head Office at Hansi . . . . " Thus, the Court at Hissar did not lack in jurisdiction.

17. Lastly, learned counsel for the petitioner has referred to C.W.P. No. 17410 of 1998. He submits that the status of the workman had, undoubtedly, changed from ''causal'' to ''badli''. However, on an objection being raised by the persons who were senior to the workman, the Labour Department of the State of Haryana had directed the petitioner to follow the rule of seniority. Consequently, the status of the workman was changed from ''badli'' to ''casual''.

18. This matter has been considered by the Labour Court. It is not disputed that no opportunity had been given by the petitioner to the workmen before their status had been changed from ''badli'' to ''causal''. It is also not disputed that this change had adversely affected their conditions of service. Even if the petitioner was following the instructions given by the Labour Department it could not have acted in violation of the principles of natural justice. These principles were not followed by the petitioner.

19. Mr. Goel submits that the petitioners were present before the authorities of the Labour Department. They may have been present. This, however, does not mean that they had notice that their conditions of service were going to be adversely affected. In this situation, we find no ground to interfere with the finding recorded by the Labour Court that the impugned action had been taken by the petitioner "without giving them an opportunity of being heard". It has been further found by the Labour Court that even others who were similarly situated have not been reverted. This finding has not been shown to be wrong. Taking the totality of circumstances into consideration, we find no ground to interfere with the award given by the Labour Court.

20. In C.W.P. No. 1437 of 1999, Mr. Goel has raised the contention that the reference was not competent and that the Labour Court has erred in interfering.

21. On a perusal of the award we find that the Labour Court had framed issue No. 2. It reads as follows:-

"Whether the reference is not maintainable?"

22. In paragraph 24 it has been observed that this issue was not pressed. Nothing has been pointed out to show that the finding as recorded by the Labour Court is wrong.

23. No other point has been raised in any of these cases.

24. In view of the above, we find no merit in these petitions. These are, consequently, dismissed. However, we make no order as to costs.