

(1996) 03 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16334 of 1992

Balwan

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: March 23, 1996

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25A

Citation: (1996) 113 PLR 310

Hon'ble Judges: T.H.B. Chalapathi, J

Bench: Single Bench

Advocate: K.S. Kapoor, for the Appellant; S.P. Jain, for the Respondent

Final Decision: Allowed

Judgement

T.H.B. Chalapathi, J.

This petition has been filed to direct the Government to refer the dispute to the labour Court.

2. The petitioner was employed as Workman in the establishment of Respondent No. 2 manufactures of Plastic Bobbins, Tubes and other textile asscessories. The services of the petitioner were terminated by respondent No. 2 on December 31, 1991. Thereafter, the petitioner served a demand notice on January 6, 1992, and sought a reference of the dispute to the Labour Court for adjudication. The State, of Haryana by its order dated June 26, 1992, declined to make a reference to the Labour court on the ground that the establishment of Respondent No. 2 is covered under the Shops Act and the petitioner has been retrenched by the Management and that he has received retrenchment compensation also. But according to the petitioner he has not received retrenchment compensation and there is a clear violation of the provisions of Section 25-F of the Industrial Disputes Act. As the dispute had not been referred to the Labour Court for adjudication, the petitioner has approached this Court for quashing the said order and for a Writ of Mandamus

directing the Government to make reference of the dispute to the Labour Court.

3. In the written statement filed by respondent No. 2, it is contended that the establishment of respondent No. 2 was covered by the Punjab Shops and Commercial Establishment Act, 1958, and it is not a factory within the meaning of Factories Act, 1948, and, therefore, the provisions of Industrial Disputes Act are not applicable. Hence, the Government rightly declined to make a reference to the Labour Court.

4. There cannot be any dispute that respondent No. 2 is an industry within the meaning of Section 2(j) of the Industrial Disputes Act. There cannot also be any dispute that an industrial dispute does exist and u/s 10 and 12(5) of the Industrial Disputes Act the State Government has to make a reference of the dispute for adjudication to the Labour Court if any industrial disputes exists. There is no provision in the Industrial Disputes Act except Section 25-A making applicability of the definition of factory as contained in Factories Act, 1948. There is also no provision in the Punjab Shops and Commercial Act, 1958, excluding the jurisdiction of the Labour Court to adjudicate on a dispute. Therefore, the order of the State Government declining to refer the dispute to the Labour Court on the ground that the dispute is covered by the Punjab Shops and Commercial Establishment Act, 1958, is not correct. u/s 25-A of the Industrial Disputes Act, only Sections 25(c) and 25(e) (both inclusive) shall not apply to industrial establishment in which less than fifty workmen on an average per working day have been employed in the preceding calendar month. In this section, Section 25-F is not included. Therefore it is clear that the provisions of Section 25-F are applicable to industrial establishments even though the workmen employed therein are less than fifty. No other provision is brought to my notice by the learned counsel for respondent No. 2 which excludes the jurisdiction of the Labour Court to decide a dispute between the workmen and the employer even though the industrial establishment does not come within the definition of factory as defined in the Factories Act, 1948. Therefore, I am of the opinion that the refusal to refer the dispute to the Labour Court by the Government in its order dated June 26, 1992 cannot be sustained. I accordingly quash the said order (Annexure P-10) and direct the State Government to refer the dispute to the Labour Court for adjudication.

5. The question whether the petitioner received the retrenchment compensation and whether there is compliance of the provisions of Section 25-F of the Industrial Disputes Act has to be decided only by the Labour Court. It is not for the State Government to go into the merits of the dispute. The State Government has to see only whether there exists an industrial dispute within the meaning of Section 2K of the Industrial Disputes Act. As already observed, there is a dispute between the workman and the employer as to whether the retrenchment of the workman is in violation of the provisions of Section 25-F of the Industrial Disputes Act. Therefore, there cannot be any dispute with regard to the existence of an industrial dispute.

6. I accordingly allow the writ petition and direct the State Government to refer the dispute to the Labour Court within two months from today. However, there will be no order as to costs.