(2011) 01 P&H CK 0417

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No''s. 18185, 18188 and 18198 of 1991

Kartar Singh and Others		APPELLANT
	Vs	
Joint Secretary to Government of Haryana and Others		RESPONDENT

Date of Decision: Jan. 28, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10, 10(1), 11, 11A, 12(4)

Citation: (2011) 4 LLJ 84 : (2011) LLR 859 : (2011) 162 PLR 86

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mehinder Singh Sullar, J.
As identical questions of law and facts are involved, therefore, I propose to dispose of the above indicated writ petitions, vide this common judgment, in order to avoid the repetition. However, the factual matrix, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant writ petitions, has been extracted from (1) titled as "Kartar Singh v. Joint Secretary to Government of Haryana and Ors." in this context.

2. The epitome of the facts, culminating in the commencement, relevant for disposal of the instant writ petitions and emanating from the record, is that Petitioners-workmen (for brevity "the workmen") were appointed in the year 1986 as Helpers-Tubewell-Op-erators by the Management of DLF Universal Limited (for short "the Management") at a monthly minimum wages of Rs. 637/-, which were subsequently increased to Rs. 800/-per month, as per rates of minimum wages fixed by the Government of Haryana in the year 1990. Since then, they were working with the Management as such.

3. Sequelly, the Petitioners claimed that in the year 1989, the Management became annoyed with the workers as they had formed and got registered union, vide registration bearing No. 1159, under the name and style "DLF Universal Ltd. Workers'' Union" and illegally terminated their services on 1.11.1989, without any notice and complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act"). They visited several times, but it (Management) refused to take them back on duties. Thereafter, they sent a registered demand notice dated 2.11.1989, but in vain. Again, they served demand notice dated 8.11.989 through the Labour-cum-Conciliation Officer (for brevity "the LCO"), Gurgaon, who called the Management thrice on many occasions, but none appeared on its behalf.

4. The LCO was stated to have sent his report dated 12.12.1989 (Annexure P1) u/s 12(4) of the Act to the Deputy Labour Commissioner, Sonepat. The demand notice dated 8.11.1989 was rejected, by virtue of letter bearing No. 78 dated 25.1.1990 (Annexure P2), being pre-mature by the Deputy Labour Commissioner, with the remarks that the Management did not terminate their services. It necessitated the workmen again to approach the LCO for sending them on duties, by way of application (Annexure P3).

5. The case set up by the workmen, in brief in so far as relevant, was that in pursuance of his (LCO) direction, the workmen reported for duty to the personnel officer of the Management, who refused to take them back on duty. Not only that, even he refused to take the workmen back on duty on 26.2.1990 before the LCO.

6. The case of the workmen further proceeds that they again served demand notice dated 3.3.1990 (Annexure P4). The LCO forwarded the dispute of the workmen, to the Secretary to Government of Labour Department (Respondent No. 1). However, the demand notice was stated to have been rejected on the basis of earlier report (Annexure P2), by way of impugned rejection letter dated 11.9.1990 (Annexure P5).

7. The Petitioners-workmen still did not feel satisfied and instituted the instant writ petitions, challenging the impugned rejection order (Annexure P5), invoking the provisions of Articles 226 and 227 of the Constitution of India, interalia on the ground that they successfully completed more than three years of service, without any break, but the Management has illegally terminated their services. So much so, no opportunity of being heard was provided to them by the authority before passing the impugned order. It was claimed that Respondent No. 1 did not have any jurisdiction to reject the demand notice. The dispute was required to be adjudicated upon by the Labour Court u/s 10(1)(d) of the Act. The impugned order was stated to be illegal, without jurisdiction and against the statutory provisions of the Act. On the basis of aforesaid allegations, the workmen sought quashment of the impugned order in the manner, depicted here-in above.

8. The Respondents contested the claim of the workmen and prayed for dismissal of the writ petitions. The facts of the case are neither intricate nor much disputed.

9. Having heard the learned Counsel for the parties, having gone through the records and relevant provisions of the Act with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant petitions deserve to be accepted for the reasons mentioned here-in-below.

10. It is not a matter of dispute that the Petitioners-workmen raised an industrial dispute, inter-alia on the ground that they have worked for a period of more than three years continuously, without any break, but their services were illegally retrenched by the Management, without any show cause notice, inquiry or payment of compensation. Ultimately, the matter was referred to the Government, but their prayer was declined by the Joint Secretary, by means of impugned order (Annexure P5), which in substance is as under:

On the subject stated above you are hereby informed that the Government did not consider your dispute fit for adjudication by the Court, because it is revealed from the enquiry that you, yourself absented from duty and left your service, therefore, there is no justification for your demand notice.

11. Meaning thereby, the Joint Secretary to Government of Haryana negatived the claim of the workmen, mainly on the ground that from the enquiry, it revealed that as the workmen themselves absented from duty and left the services, therefore, there is no justification in their demand notice in this context.

12. Such thus being the position on record, now the sole question, that arises for determination in these petitions is, as to whether the Joint Secretary to Government of Haryana (Respondent No. 1) has any jurisdiction to hold an inquiry and came to the conclusion that the Petitioners themselves absented from duty and left the services or not?

13. Having regard to the rival contentions of the learned Counsel for the parties, here, to me, Respondent No. 1 did not have the jurisdiction to adjudicate upon in industrial dispute between the parties.

14. What is not disputed here is that section 10 of the Act deals with the reference of dispute between the workman and Management, while sections 11 and 11-A postulate the procedure and powers to give appropriate relief by conciliation officers, Boards, Labour Courts, Tribunal and National Tribunals.

15. Sequelly, section 12(5) of the Act posits that "if, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

16. A co-joint reading of these provisions, would leave no manner of doubt, that the power of Government is only to refer and it cannot adjudicate upon the matter. There is a clear distinction in the demarcated functions of reference by the Government and the Court''s adjudication. The power of reference of the Government u/s 12(5) has to be read with Section 10(1) of the Act. In dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4), the appropriate Government ultimately exercises its power u/s 10(1) of the Act, subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made u/s 12(4).

17. Ex facie, the argument of the learned Counsel for the Petitioners that the Government has declined the reference, based on irrelevant and extraneous consideration, has considerable force. The appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of Industrial Tribunal/Labour Court. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions in this regard as it would again be the province of the Industrial Tribunal.

18. As is evident from the record that the main ground, which appears to have been weighed with the Joint Secretary in declining the reference was that the Petitioners themselves absented from the duty, left their services and there is no justification for reference. Here, to my mind, the Joint Secretary has slipped into legal error in this relevant connection. The Respondent No. 1 has vaguely presumed the absence of the Petitioners, even without indicating the period of their absence and without any inquiry that they willfully remained absent and without any cogent material on record, as well. In this manner, the Joint Secretary has illegally assumed the power and jurisdiction of the Industrial Tribunal and the Labour Courts and decided the factual matrix and law point, which was in the domain of the Industrial Tribunal. Therefore, the impugned order (An-nexure P5) cannot legally be sustained in this relevant connection.

19. An identical question arose before the Hon''ble Apex Court in case Ram Avtar Sharma and Others Vs. State of Haryana and Another, . Having interpreted the relevant provisions, it was ruled as under:

The view that while exercising power u/s 10(1), the Government performs administrative function can be supported by an alternative line of reasoning. Assuming that making or refusing to make a reference u/s 10(1) is a quasi-judicial function, there is bound to be a conflict of jurisdiction if the reference is ultimately made. A quasi-judicial function is to some extent an adjudicatory function in a lis between two contending parties. The Government as an umpire, assuming that it is performing a quasi-judicial function when it proceeds to make a reference, would imply that the quasi-judicial determination of lis prima facie shows that one who

raised the dispute has established merits of the dispute. The inference necessarily follows from the assumption that the function performed u/s 10(1) is a quasi-judicial function. Now by exercising power u/s 10, a reference is made to a Tribunal for adjudication and the Tribunal comes to the conclusion that there was no merit in the dispute, prima facie a conflict of jurisdiction may emerge. Therefore the view that while exercising power u/s 10(1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond the pale of controversy.

Now if the Government performs an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. In State of Bombay v. K.P. Krishnan, it was held that a writ of mandamus would lie against the Government if the order passed by it u/s 10(1) is based or induced by reasons as given by the Government are extraneous, irrelevant and not germane to the determination. In such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. May be, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy.

20. Again, a Division Bench of this Court in case Lal Chand and Ors. v. State of Haryana and Ors. 1998 (III) L.L.J. (Supp.) 419 observed as follows:

A combined reading of the above quoted provisions shows that the conciliation officer is under a duty to hold conciliation proceedings where any industrial dispute exists or is apprehended. For this purpose, the Conciliation Officer is empowered to investigate the dispute and all matters affecting the merits and the right settlement thereof. In case the parties arrive at a settlement, the Conciliation Officer is required to send a report thereof to the appropriate Government together with the memorandum of settlement signed by the parties to the dispute. In cases where the settlement is not reached between the parties, in terms of Section 12(4), the Conciliation Officer is required to send full report to the appropriate Government

specifying therein the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of those facts and circumstances and the reasons on account of which a settlement could not be arrived at. For the purpose of discharging his duties, the Conciliation Officer is empowered to enter the premises occupied by any establishment to which the dispute relates. He is also empowered to enforce attendance of any person for the purpose of examination of that person. The Conciliation Officer may also inspect any document which may be considered relevant by him. He is also empowered to exercise powers vesting in the Civil Court in respect of enforcing the attendance of any person and examining him. u/s 12(5) as well as u/s 10(1) the appropriate Government is empowered to make reference of the dispute to an appropriate Board, Labour Court, Tribunal or National Tribunal. Where the appropriate Government does not make a reference even after receipt of the report of the Conciliation Officer, it is duty-bound to record reasons and communicate the same to the parties concerned. This shows that the Conciliation Officer is not vested with any power to reject the demand raised by an employee. As a logical corollary it must be held that the Conciliation Officer does not have any power to enter into the merits of the dispute and to take a decision whether any industrial dispute exists or not. The Conciliation Officer is also not entitled to decide whether or not he should send a report to the Government. He is duty bound to send a report to the Government and it is for the Government to consider the matter and pass appropriate order u/s 12(5). Even the power of the Government to make a reference u/s 10 and Section 12(5) has become subject-matter of adjudication by the Supreme Court as well as the High Courts and it is the consistent view that ordinarily the Government is duty- bound to make a reference and only in a case where no dispute exists or the dispute sought to be raised is totally frivolous, on the basis of which the Government can decline to make a reference. In Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , the Supreme Court has made the following observations regarding the power of the Government to make a reference:

The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting adjudication.

We are not multiplying the authorities on the subject because it is well settled that while exercising its power u/s 10(1) or Section 12(5) the Government is not empowered to decide a dispute. The Government cannot examine the merits of a case for the purpose of recording a finding whether the claim made by the workmen is justified or not. The only thing which the Government is required to look into is whether there exists industrial dispute or the one is apprehended. Once the

Government finds that the dispute exists or is apprehended, it is duty-bound to make a reference.

21. Therefore, it is held that the Joint Secretary to Government of Haryana (Respondent No. 1) has illegally negatived the claim of the workmen in tiiis relevant direction. The law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand. Thus, the contrary arguments of learned Counsel for contesting Respondents "stricto sensu" liable to be and are hereby repelled and the impugned orders (Annexures P2 and P5) deserve to be and are hereby set aside in the obtaining circumstances of the case.

22. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

23. In the light of the aforesaid reasons, the instant writ petitions are accepted with costs and the impugned orders (Annexures P2 and P5) are hereby quashed in this regard. Consequently, the Respondent-State is directed to pass a necessary order referring the dispute to the competent Court for its adjudication within a period of two months from the date of receipt of a certified copy of this order in accordance with law.