
**Secretary (Policy) Regional Director (Food) Employees Association Vs
Food Corporation of India and Others**

Writ Petition No. 5350 (W) of 2003

Court: Calcutta High Court

Date of Decision: April 24, 2009

Acts Referred:

Industrial Disputes Act, 1947 " Section 10(1)(d), 10(4), 25F

Citation: (2010) 124 FLR 369

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Madhusudan Dutta, for the Appellant; Kamal Kumar Chattopadhyay, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this writ petition dated March 31, 2003 is aggrieved by the award of the Central Government

Industrial Tribunal, Kolkata dated January 9, 2003, Annexure P 9 at pp. 122-170.

2. By an order dated December 27, 1980, Annexure P3 at p.30, the Central Government referred an existing industrial dispute between the

management of Food Corporation of India and their workmen. The reference was made in exercise of power conferred by section 10(1)(d) of the

Industrial Disputes Act, 1947. The dispute specified in the schedule to the order was as follows:-

Whether the action of the Joint Manager (Port Operation), Food Corporation of India, Calcutta in dismissing Shri Niranjana Das Gupta and forty-

nine other workmen from service as per office order dated 28.3.1974 is legal, proper and justified ? If not to what relief are the workmen entitled?

3. On receipt of notice from the Tribunal the parties filed their respective written statements. In its written statement, Annexure P5 at pp.46-60, the

corporation has stated as follows. ""The Corpn. craves leave to refer to and rely upon material documents to establish the bona fide of the action

taken by the Corporation as well as to unfold the frivolity of the baseless allegations made by Union. The Corporation craves leave to adduce

evidence to establish the charges against the concerned employees."" (para. 13). ""The case of concerned workman is not that of retrenchment but

dismissal consequent upon commission of gross misconduct of getting appointment in a collusive manner without having requisite competence.

(para. 19). ""The concerned cases are not of retrenchment but dismissal effected after thorough investigation into the matter and hence the

allegations regarding irregularity or motive do not arise."" (para.20). ""The provisions of section 25-F of the Industrial Disputes Act, have not

applicability inasmuch as no retrenchment of the 50 workmen was effected and the contention on this score is misconceived. There was no

perverse motive behind the dismissal from service."" (para.21). ""It is a case of dismissal for the misconduct or securing employment (a) dishonestly

(b) in a collusive way being fully conscious of (c) inefficiency and incompetency."" (para.21). ""The Corporation, therefore, submits that the learned

Tribunal be pleased to hold in answer to the issue under Reference that the Reference is not maintainable and in any event, the dismissals of the

workmen in the facts and circumstances of the case are justified."" (para.28).

4. Before the Tribunal the Corporation raised the following four preliminary points:-

(i) This second reference is bad in law because the Food Corporation of India was not given any opportunity to be, heard before making the order

of reference; (ii) The Association in question which is espousing the cause of the concerned 50 workmen has no locus standi and no representative

character and hence it should be held that no industrial dispute exists; (iii) No dispute having been raised by the Association with the management,

the reference should be held to be illegal; and (iv) The present reference being a delayed reference having been made in 1981 in respect of the

dispute of concerned workman in 1974 should be held to be invalid.

5. By an order dated March 11,1986, Annexure P-6 at p-61, the Tribunal held that there was no merit in the preliminary points. The Corporation's writ petition, registered as Company No. 12456 (W) of 1986, challenging the order of the Tribunal dated March 11, 1986 was

allowed by a judgment and order dated January 30,1996, Annexure P-7 at p-71. The petitioner's appeal, FMAT No. 729 of 1996, was allowed

by the judgment and order dated August 4, 2000, Annexure P-S at p. 108, of the Division Bench that said as follows:-

In the instant case an allegation has been made that a fraud had been practised in the matter of appointment by the appellant. It is, therefore, not a

case where the services had been terminated on the ground that the services of the petitioners were not found to be satisfactory during the

probationary period. In fact in V.P. Ahuja v. State of Punjab and others, 2000 (85) FLR 197 (SC) and Dipti Prakash Banerjee v. Satvendra Nath

Bose National Centre for Basic Sciences, Calcutta, 1999 (81) FLR 687 (SC) it has clearly been held that when the order is stigmatic, a

probationer has also a right to be heard, and once an order of dismissal is passed on such ground, the same can be questioned.

6. Thereupon the Tribunal recorded evidence adduced by the parties and passed the impugned award recording in para. 15 as follows:-

15. It has been contended on behalf of the management that the termination, therefore, cannot be termed as stigmatic and it is termination

simpliciter and, therefore, there is nothing illegal in the order of terminator. The wordings of the termination orders, Ext.M-3 series are very clear in

which it has been stated that the person concerned on probation is discharged from service with effect from the forenoon of 1st April, 1974 and in

lieu of 30 days notice, he will be paid one month's pay under sub-Regulation 3(b) of Regulation 15 of the Food Corporation of India Staff

Regulation, 1971 as amended upto date. It has therefore been submitted on behalf of the management that when the terms of appointment were

very clear that the appointments were on temporary basis against temporary posts, terminable at any time and that the candidates were to be

treated on probation for a period of one year and also that the candidates were supposed to appear for re-test, if required by the management, it

goes to show that the re-tests were taken fully in accordance with the terms and conditions of service of these workmen. The management did not

consider to remove them by attaching any stigma to them, though there were complaints earlier against them and after taking re-test, terminated the

service of the employees who were not found fit. Therefore, it is clearly a case of termination simpliciter and it cannot be treated as either dismissal

or retrenchment u/s 2(oo) of the Industrial Disputes Act, 1947.

7. The conclusion of the Tribunal recorded in para. 16 of the award is as follows:-

16. In such a circumstances, the removal of the workman concerned from service cannot be termed as illegal and invalid. The reference is decided

accordingly and it is held that, the workmen concerned are not entitled to any relief what-so-ever.

8. The Corporation is contesting the writ petition and it has filed an opposition dated June 25, 2003. In para. 13 of the opposition, it has stated as

follows:-

.....so it was a case dismissal for their inefficiency and incompetency.

9. Mr Dutta, Counsel for the petitioner, has argued that when the dispute referred to the Tribunal was whether the dismissal of the workmen

concerned by the Corporation was justified, the Tribunal has examined a case whether it was a case of dismissal or termination simpliciter, and has

held that the removal of the workmen from services was justified. His submission is that in the face of the dispute specified in the schedule to the

order of reference and the cases of the parties stated in their respective written statements, the Tribunal had no jurisdiction to examine a third case

whether it was a case of dismissal or termination simpliciter.

10. He has relied on the provisions of section 10(4) of the Industrial Disputes Act, 1947 and the decisions in Shankar Chakravarti v. Britannia

Biscuit Company, and another, 1979 (39) FLR 70 (SC) Pottery Mazdoor Panchayat v. The Perfect Pottery Company Ltd. and another, 1979

(38) FLR 38 (SC) Mahendra L. Jain and others v. Indore Development Authority and others, 2005 (104) FLR 54 (SC) Workmen rep. by South

Eastern Roadways Workmen's Union and another v. VIII Industrial Tribunal and others, 2005 (105) FLR 395 (Cal.) State Bank of Bikaner and

Jaipur v. Om Prakash Sharma, 2006 (109) FLR 1203 (SC) and Sinclairs Hotels and Transportation Limited and another v. State of West Bengal

and others. 2008 (2) CHN 858 (Cal) (DB)

11. Senior Counsel for the corporation has argued that since the workmen whose services were terminated had obtained employment by practising

fraud and fraud unravels everything, in the facts and circumstances of the case appearing from the evidence adduced by parties, the Tribunal was

fully justified in concluding that it was not a case of dismissal casting stigma, but a case of termination simpliciter, and hence the removal of the

workmen from the services of the Corporation was justified. Resuming arguments, Mr Chattopadhyay, junior Counsel for the corporation, has

carried them on saying that in view of the evidence, the Tribunal was authorised to reach a conclusion that it was not a case of dismissal of the

workmen from the services of the Corporation, but a case of termination simpliciter.

12. The provisions of section 10(4) of the Industrial Disputes Act, 1947 are as follows:-

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order,

the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the

case may be, shall confine its adjudication to those points and matters incidental thereto.

13. In Shankar Chakravarti v. Britannia Biscuit Company and another, 1979 (2) LLJ 194 (SC) : 1979 (39) FLR 70 (SC) their Lordships of the

Supreme Court held (para.31):-

It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no

notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that

pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the

other party of the case it is called upon to meet. This view expressed in Tin Printers 9 (P) Ltd. v. Industrial Tribunal, 1967 11 L.L.J. 667 at p.680

commands to us. The rules of fair play demand where a party seeks to establish a contention which if proved would be sufficient to deny relief to

the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving

something which is not pleaded. This is very elementary.

14. In *Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd. and another*, 1979 Lab. I.C. 827 (SC) : 1979 (38) FLR 38 (SC) it was held

(para. 11) by the Supreme Court:-

Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its

view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its

business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references

were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references the Tribunals

were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under

the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to

whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure

and inquire into the question whether the business was in fact closed down by the management.

15. In *Mahendra L. Jain and others v. Indore Development Authority and others*, AIR 2005 SC 1252 : 2005 (104) FLR 54 (SC) their Lordships

of the Supreme Court held (para.34):-

....Furthermore the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the

four corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of

raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof.

16. In *Workmen rep. by Bharat Petroleum Corporation Ltd. Vs. Petroleum Employees Union and Another*, their Lordships of the Division Bench

held (para. 8):-

This question cannot be gone into in view of the scope and ambit of reference, which was the only question so far as closure is concerned, as to

whether it was real or not. Whether the closure was justified or closure was invalid was not the question, which was referred to. The Tribunal while

adjudicating the dispute cannot travel beyond the scope of the reference. It is only the question or the dispute that has been referred to the Tribunal

by the Government the Tribunal has to confine its jurisdiction. The jurisdiction to adjudicate is conferred on the Tribunal only by reason of an order

of reference u/s 10(1) of the Industrial Disputes Act, 1947. Therefore, neither the Tribunal nor the Court can consider issues, which are not

referred to the Tribunal.

17. In *State Bank of Bikaner and Jaipur v. Om Prakash Sharma*, 2006 (2) LLJ 1046 (SC) : 2006 (109) FLR 1203 (SC) their Lordships of the

Supreme Court held (para. 14):-

In the instant case, the Award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the

Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing

the Award, if the Labour Court exceeds its jurisdiction, the Award must be held to be suffering from a jurisdictional error. It was capable of being

corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its

jurisdiction.

18. In *Sinclair's Hotels & Transportation Limited and another v. State of West Bengal and others* 2008 (2) CUN 858 (Cal) (DB) their Lordships

of the Division Bench held (para. 10):-

We have gone through the judgments referred to above. The principle of law laid down by the Hon"ble Court is settled principle of law. The ratio

of all the judgments supports the contention of the learned Advocate of the respondent/workman that the Industrial Tribunal cannot travel beyond

the ambit and scope of the issues referred to it for adjudication.

19. It is, therefore, evident that in view of the provisions of section 10(4) of the Industrial Disputes Act, 1947 and the law declared by the

Supreme Court, a Tribunal has no jurisdiction to adjudicate any point of dispute other than the ones, and matters incidental thereto, specified in the

order of reference. Here the dispute referred was whether the dismissal of the workmen by the management of the Corporation was justified.

Hence the Tribunal was to proceed on the basis that the Corporation had dismissed the workmen from services. As a matter of fact, the

Corporation also stated a case in its written statement in justification of the dismissal of the workmen.

20. Whether the actions of the corporation amounted to termination simpliciter or dismissal of the workmen was not a point of dispute referred to

the Tribunal. At the time of arguments the corporation, however, sought to impress upon the Tribunal that its actions actually amounted to

termination simpliciter, not dismissal for misconduct. It is evident that the tribunal was swayed by the arguments, and that, consequently, it

adjudicated a dispute that was never referred to it. The Tribunal exceeded its jurisdiction by adjudicating a dispute that was not referred to it, and

answering a question that it was not supposed to answer.

21. I repeat that in view of the point of dispute specified in the schedule to the order of reference that was not challenged by the corporation

contending that the appropriate Government referred a point of dispute that could not be referred on the facts of the case, the Tribunal was

required to adjudicate whether the dismissal of the workmen was justified; and if not, then to what relief the workmen were entitled. I am,

therefore, of the view that the impugned award cannot be sustained, and that the Tribunal should be directed to adjudicate only the point of dispute

referred to it on the basis of the evidence already adduced by the parties.

22. For these reasons, I allow the writ petition, set aside the impugned award and direct the Tribunal to adjudicate only the point of dispute

referred to it on the basis of the evidence already recorded, but after giving the parties fresh opportunity of hearing, and make a fresh award within

six weeks from the date of communication of this order. There shall be no order for costs.

23. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the

section concerned.