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The State of Haryana (5), and *Gurnam Singh v. The State of Punjab* (6). Thus when this link evidence is not as per law and further it is not put to the accused under Section 313 of the Code of Criminal Procedure, this evidence cannot be considered at all for convicting the accused. Though it is called link evidence, but it is very material piece of evidence to prove the facts that the sample was not tampered with, after the seizure it was duly sealed, it was kept intact in the police Malkhana and in the same condition it was sent to the Chemical Examiner for analysis. Since this link evidence cannot be considered, the report of the Chemical Examiner, Exhibit PD can also not be read in evidence against the accused. This has caused a dent in the whole of the prosecution case and accused is entitled to get benefit of doubt on this count. The burden of proof is always on the prosecution and it has to prove its case beyond any shadow of doubt.

(9) Accordingly, this appeal is allowed. Accused is acquitted, as he is given benefit of doubt. If he is in jail and is not required in any other case, he be set at liberty forthwith. Fine, if deposited be returned to him.

J.S.T.

(5) 1987 (2) R.C.R. 217.

(6) 1992 (i) R.C.R. 39.

Before Hon'ble N. K. Sodhi, J.

**THE PUNJAB STATE CO-OPERATIVE SUPPLY & MARKETING
FEDERATION LIMITED (MARKFED),—Petitioner.**

versus

STATE OF PUNJAB & OTHERS,—Respondents.

C.W.P. No. 11936 of 1992

14th September, 1995.

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 2(k)—Industrial dispute—Meaning thereof any dispute between employer & workman in connection with terms of employment and conditions of labour—Definition wide enough to include dispute raised by Union regarding change in pay scale and designation of Field Officers—Definition includes demand for House rent & field allowances as well.

Held, that the adjective 'industrial' suggests that the dispute must pertain to an 'industry' as defined in clause (j) of Section 2 of the Act and the definition makes it clear that not disputes and differences of all sorts but only those which bear upon the relationship of employers and workmen and the terms of employment and conditions of labour fall within its ambit. Within these limitations, every kind of dispute that arises between an employer and his workmen relating to the terms of employment and conditions of labour would be covered by the definition. In the instant case, the disputes raised by the Union pertain to the change of designation of Field Officers and Field Assistants to that of Senior Cotton Purchase Officers and Cotton Purchase Officers and also to the increase in their pay scales. This dispute definitely relates to the terms of employment of the workmen who are members of the Union and is, therefore, covered by the definition of 'industrial dispute'. Similarly, the demand for house rent allowance and field allowance is covered by the definition.

(Para 4)

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—Tribunal—Powers—In settling disputes Tribunal not confined to administration of justice in accordance with law—Can confer rights and privileges on either party which it considers reasonable though it may not be within terms of any existing agreement.

Held, that industrial adjudication does not proceed according to the strict law of master and servant and as observed by Mahajan, J. in *Western India Automobile Association v. Industrial Tribunal* 1949 LLJ-245. "A Court of law proceeds on the footing that no power exists in the Courts to make contracts for people ; and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties have made." On the other hand it is by now well settled that the award of the tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or to give effect to the contractual rights and obligations of the parties. Industrial adjudication can create new rights and obligations between them which are essential for keeping industrial peace.

(Para 6)

Hemant Kumar, Advocate, for the Petitioner.

A. S. Grewal, AAG, Punjab, for 1 & 2, for the Respondent.

ORDER

N. K. Sodhi, J.

(1) Petitioner herein (for short the management) is an Apex Co-operative Society carrying on its business activities under the name and style of the Punjab State, Co-operative Supply and Marketing Federation Limited, Chandigarh. The Union of its employees working in the cotton cell known as Markfed Cotton Cell Employees Union (hereinafter called the Union) through its General Secretary served a demand notice on the management raising amongst others the following three demands :—

- (i) The Field Officer (C) to be designated as Senior Cotton Purchase Officer and given pay in the scale of Rs. 2,200—3,700. The Field Assistant (C) be given designation of Cotton Purchase Officer in the pay scale of Rs. 2,000—3,500 ;
- (ii) House Rent Allowance ;
- (iii) The Field allowance at the rate of Rs. 200 per month for the full cotton season to all cotton staff.

(2) Since these demands could not be settled during the course of conciliation proceedings, the State Government in the exercise of its powers under Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short the Act) read with Section 2(k) thereof referred the aforementioned three demands for adjudication. On receipt of notices from the Tribunal the Union filed its statement of claim to which the management filed its written statement. While the matter was pending before the Tribunal the management filed the present petition under Article 226 of the Constitution challenging the order of reference (Annexure P-2 with the petition). The Motion Bench while admitting the writ petition restrained the Tribunal from passing the final order.

(3) The only argument raised by Mr. Hemant Gupta, Advocate on behalf of the management is that the disputes referred for adjudication by the State Government are not the disputes within the meaning of Section 2 (k) of the Act and, therefore, it is not open to the Tribunal to adjudicate thereon. The other fact of his submission is that the matters regarding pay scales and designation of

different posts are in the discretion of the management being purely a managerial function and it is not open to the Union to challenge the same nor is it open to the Tribunal to adjudicate upon and interfere with managerial discretion. The learned counsel has relied upon *Brooke Bond (India) (Private) Ltd. v. Their Workmen* (1), *The Secretary, Finance Department & Others v. The West Bengal Registration Service Association & Others* (2), *The Hindustan Lever Ltd. v. The Workmen* (3) and *Workmen of M/s Williamson Magor & Co. Ltd. v. M/s William Magor & Co. Ltd. and another* (4), in support of his contention.

(4) Having given my thoughtful consideration to the contention of the petitioner, I have not been able to persuade myself to accept the same. Industrial dispute has been defined in clause (k) of Section 2 of the Act to mean any dispute or difference between an employer and his workmen which is connected with the employment or non employment or the terms of employment or with the conditions of labour, of any person. The definition is wide enough to include the dispute raised by the Union regarding the change of designation of the employees and also for the increase in their pay scales. The adjective 'industrial' suggests that the dispute must pertain to an 'industry' as defined in clause (j) of Section 2 of the Act and the definition makes it clear that not disputes and differences of all sorts but only those which bear upon the relationship of employers and workmen and the terms of employment and conditions of labour fall within its ambit. Within these limitations, every kind of dispute that arises between an employer and his workmen relating to the terms of employment and conditions of labour would be covered by the definition. In the instant case, the disputes raised by the Union pertain to the change of designation of Field Officers and Field Assistants to that of Senior Cotton Purchase Officers and Cotton Purchase Officers and also to the increase in their pay scales. This dispute definitely relates to the terms of employment of the workmen who are members of the Union and is, therefore, covered by the definition of 'industrial dispute'. Similarly, the demand for house rent allowance and field allowance is covered by the definition. The disputes raised are undoubtedly 'industrial disputes' but whether

(1) 1963 (1) LLJ-256.

(2) J.T. 1992 (2) S.C. 27.

(3) 1974 (1) LLJ-94.

(4) 1982 (1) LLJ-33.

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the employees are entitled to what they are demanding is a matter for the Tribunal to decide in accordance with law on the basis of evidence that may be led by the parties before it. The order of reference cannot be allowed to be scuttled at this stage. In *D. P. Maheshwari v. Delhi Admn. and others* (5), the Supreme Court has sounded a signal for all Tribunals and Courts to follow including this Court when exercising powers under Article 226 of the Constitution and the learned Judges have deprecated the practice of certain employers to avoid the decisions of industrial disputes on merits by raising issues which are not of much consequence. The relevant observations of Their Lordships in para 1 of the judgment may be usefully quoted and are as under :—

“We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary

(5) A.I.R. 1984 S.C. 153.

objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

(5) The writ petition deserves to be dismissed as it is an attempt on the part of the management to avoid decision of the Tribunal on merits and stifle the proceedings at the threshold.

(6) Mr. Gupta strenuously urged that the matter pertaining to designation and grant of pay scales was a managerial function and, therefore, in the discretion of the management with which the adjudicating authorities could not interfere. I do not agree. Ordinarily, the question as to what should be the designation of an employee and what should be his pay scale are matters which are determined by the employer in the exercise of its managerial functions but such exercise of power is always subject to industrial adjudication which settles industrial disputes on the principles of fair play and justice. Industrial adjudication does not proceed according to the strict law of master and servant and as observed by Mahajan, J. in *Western India Automobile Association v. Industrial Tribunal* (6), "A Court of law proceeds on the footing that no power exists in the Courts to make contracts for people ; and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties have made." On the other hand it is by now well settled that the award of the tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or to give effect to the contractual rights and obligations of the parties. Industrial adjudication can create new

rights and obligations between them which are essential for keeping industrial peace. It is thus open to an Industrial Tribunal in appropriate cases to impose new obligations on the parties before it or modify contracts or give awards which may have the effect of extending existing agreements or making new ones, in the interest of social justice and with the object of securing peace and harmony between the employer and workmen. The rights of an employer to hire labour, to dismiss the employees, to fix wages, dearness allowance and bonus and gratuity, to grant leave facilities, housing accommodation and other amenities are controlled and regulated by industrial adjudication by well recognised limits placed upon the contractual rights of the parties. The judgments relied upon by Mr. Gupta, do not in any way support his contention and the observations made in some of those decisions were read out of context as those were not made in the context of industrial adjudication.

(7) In the result, there is no merit in the writ petition and the same stands dismissed with costs which are assessed at Rs. 1,000.

J.S.T.

Before Hon'ble Ashok Bhan & N. K. Sodhi, JJ.

SEPOY/LANS NAIK RAJBIR SINGH,—Petitioner.

versus

THE STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 11235 of 1994

13th December, 1995

Constitution of India, 1950—Art. 226—Army Act, 1950—Ss. 69 & 70—Jurisdiction—Military person accused of raping—Whether to be tried by Civil Court having criminal jurisdiction or by Court martial—Held that case to be tried by Civil Court of Criminal jurisdiction as petitioner was not on active service at the time of occurrence.

Held that, under Section 70 of the Army Act, an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder or of rape in relation to such a person is exclusively triable by a criminal Court but if the person is on active service at the time of commission of