Before S.S. Sudhalkar, and Mehtab S. Gill, JJ

RAMESH MISHRA—*Petitioner*

versus

M/s TARA INDUSTRIES LTD. AND OTHERS—*Respondents*

C.W.P. No. 3821 of 2000

18th October, 2000

Industrial Disputes Act, 1947—Ss. 2-A and 10(1) (c)—Constitution of India, 1950—Art. 226—Dispute between workman and employer whether they were working as helpers or Badli workers—Govt. declining the prayer of the workman for reference while accepting the claim of the employer that they were Badli workers who had declined the offer to join duty—Dispute between the parties requires evidence—It should have been referred to the Labour Court—Power of the Govt. u/s 10 of the Act is administrative and it cannot delve into the merits of the case—Order of the Govt.rejecting the demand and declining the prayer for reference quashed.

Held, that the Government could not delve into merits of the case and make adjudication. The question in this case was whether the petitioners were Helpers or Badli workers and when this dispute was there, it should have been referred to the Labour Court. The Labour Court after considering the evidence could have come to a proper conclusion.

(Para 17)

Further, held that the Parliament amended the 1947 Act by Industrial Disputes (Amendment) Act, 1965 which was brought into force w.e.f. 1st December, 1965. By this amendment, Section 2-A came to be insreted in the Act. By virtue of this Section, any dispute or difference between a workman and his employer in relation to dismissal, discharge, retrenchment or termination of his service is now deemed to be an industrial dispute even though such dispute may not be covered by Section 2(k). Thus, by legislative fiction, an individual dispute has been converted into an industrial dispute. Thus, Section 2-A of the Act is applicable to the petitioners as they have raised the dispute individually.

(Paras 18 and 19)

R.S. Mann, *Advocate for the Petitioner*

R.L. Chopra, *Advocate for respondent No. 1*

K.K. Gupta, *Advocate for respondents No. 2 and 3.*

JUDGMENT

S.S. Sudhalkar, J

(1) The law to be decided in these writ petitions being CWP No. 3821 of 2000, 3858 of 2000 and 6314 of 2000 being the same, they are disposed of by this common judgment.

(2) These three petitions are filed by different workman (hereinafter referred to as "the petitioner") of M/s Tara Industrial Limited (hereinafter referred to as "the employer").

(3) Case of the workman is that they were working with the employer as helpers. They were appointed on 22nd August, 1994 and continued till the year 1999 and they were terminated on different dates in the year 1999, however, after completion of 240 working days in a calendar year prior to their termination. They raised the demand. However, by the impugned orders i.e. Annexure P/4 of all these petitions, the demand was rejected and prayer for reference was declined. Hence these writ petitions have been filed by the petitioners. The reasons for declining the prayer for reference in the cases of all the petitioners quoted in the impugned order (s) being verbatum can be reproduced here under :—

> "2. The perusal of records reveals that workman was enrolled in the list of Badli worker and has been doing work as such. since the workman has declined the offer of management to repoprt for duty as per their documents, which were duly accepted by him, no case under Section 2-A of the Industrial Disputes Act. 1947 is made out."

(4) The petitioners have challenged the above orders of the Government and have prayed that the Government be directed to refer the cases to the Labour Court for decision.

(5) Notice of motion was issued in these writ petitions. The employer has filed written statements.

(6) We have heard the learned counsel for the parties.

(7) Counsel for the respondends has argued that the Government cannot act only as a 'Postman" and hence to take decision regarding whether the disputes is to be referred to the Labour Court or not. Section 10(1) (c) of the Industrial Disputes Act, (hereinafter referred to as "the Act") provides for the reference of dispute to the Labour Court. Section 10(1) of the Act is reproduced hereunder :—

"10(1). (a) xx xx xxx

(b) xx xx xxx

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) xx xx xxx

(8) Sr. No. 3 in the Second Schedule to the Act is as under :—

"3. Discharge or dismissal of workman including re-instatement of, or grant of relief to, workman wrongfully dismissed;"

(9) Learned counsel for the petitioners argued that the services of the petitioners were terminated against the provisions of the Act and when a demand was made, reference should have been made to the Labour Court. Counsel for the employer argued that the employer had categorically stated in their reply that they have never terminated the services of the petitioners and they themselves did not report on duty. It is their case that the petitioners were Badli workers and hence their services were not terminated. The petitioners refused to attend duties and therefore, there is no question of termination. It is contended by the Management that petitioners were Badli workers and in the alternative it is contended that if the petitioners are not Badli workers they have remedy under Section 2k of the Act and they should have raised industrial dispute under the said section.

(10) Looking to the stand taken by the Management itself, it is clear that no concreate decision could have been taken that the petitioners were badli workers. In the light of this position, it is to be considered whether the Government was right in passing the impugned orders or not ? The Government has accepted the stand that the petitioners were badli workers.

(11) It is the contention of the petitioners in the writ petitions that the question whether they were Helpers/workmen or Badli workers required evidence and hence also their cases should have been referred to the Labour Court.

(12) Learned counsel for respondents No. 2 and 3 cited the case of *The Secretary, Indian Tea Association* v. *Ajit Kumar Barat and others* (1). This is a decision of the Supreme Court in which after considering various judgments, the appeal of the Management against the workman was allowed and it was held that the learned Single Judge and the appellate court erred in issuing *mandamus* directing the State Government to make an appropriate reference. In that case, respondent No. 1 was employed as Joint Secretary of the Indian Tea Association. On 27th November, 1995 he was dismissed from service for disobeying an order of transfer. He complained of his dismissal to Labour Commissioner. Conciliation proceedings were held. The employer raised a stand that the petitioner was not a workman. A failure report was submitted by the Joint Labour Commissioner, recommending a reference, as according to him, the question whether the petitioner in that case was a workman required adjudication. The Government did not act, therefore, the workman moved Calcutta High Court. The High Court directed the State Government to take a decision under Section 12(5) of the Act. The Government communicated its decision in writing wherein it regretted its inability to make a reference as the petitioner was not a workman. Again the petitioner moved the High Court against the said order and the learned Single Judge of the High Court directed the appropriate government to make a reference. The appeal filed by the management was dismissed and hence the Management appealed to the Supreme Court. The Supreme Court observed that from the order of the State Government it could be found that while considering the question whether respondent No. 1 was a workman, it took into consideration the salary and allowances of respondent No. 1 drawn at the relevant time and also the nature of work. It is considered by the Supreme Court that respondent No. 1 who had appeared in person did not dispute the salary and allowances etc. but contended that his responsibilities were supervisory and not managerial in nature. The Supreme Court also considered the circular dated 30th March, 1994 issued by the appellant-association which indicated that the duties of respondent No. 1 was the functioning as a Joint Secretary and had to deal with

(1) 2000 LLR 506

all legal matters and court proceedings, labour and land laws and publications etc. etc. The Supreme Court also observed that from the records, respondent No. 1 had power to sanction expenses incurred in litigation. It observed that on the above material the State Government rightly formed the opinion that respondnet No. 1 was not a workman. The facts of the case before the Supreme Court were completely different. From the *admitted* facts, it could be seen that the respondent in the case of Ajit Kumar Barat (supra) could not be termed as a "workman" and *prima facie* he fell out of the ambit of the Act for being considered as a workman and the consequential benefits thereupon.

(13) In the present case the dispute is only regarding the fact i.e. whether the respondents were Badli workers or Helpers and when the fact is to be decided, it was matter of evidence and therefore, respondent No. 3 has decided the disputed question of fact. Therefore, the principle laid down in Ajit Kumar Barat's case (supra) will not be applicable to the facts of the present case.

(14) The question regarding the powers of the Government to decide regarding making of reference was exhaustively dealt with in the case of *Punjab Anand Lamp Employees Union* vs. *M/s Punjab Anand Lamp Industry Ltd.and another* (2). It is a judgment of Division Bench of this court in which one of us (S. S. Sudhalkar) was a Member. The facts of the said case were that three workman who claimed themselves to be active office bearers/members of the Punjab Anand Lamp Employees Union (For short PALEU) were subjected to domestic enquiry on the allegation of having assaulted the Production Manager and the Assistant Quality Manager. The enquiry officer held them guilty of the charges. An additional charge levelled against Kuldeep Singh that he had gone on illegal strike in violation of the settlement, was also held proved against him. All of them were dismissed from service w.e.f. 2nd December, 1992. The petitioner-union served a notice of demand upon the management challenging the unlawful dismissal of the workmen. The employer did not accept the demand. During the conciliation proceedings, two of the workmen namely Madan Lal and Shakti Chand settled their accounts and withdrew their dispute. Thereafter the Union represented before the Additional Labour Commissioner, Punjab that the dispute be referred on behalf of workman - Kuldeep Singh. The employer contested the claim whereupon the impugned order refusing to refer the dispute

(2) 1996 (4) RSJ 250

relating to the service of workman Kuldeep Singh was passed on the ground that he has been dismissed after serious misconduct and after complying with the legal provisions. After discussing various authorities of English Courts and the Supreme Court, it was held by the D. B. as under :—

"66. From the above referred decisions of the Supreme Court and of this Court,the following propositions emerge :—

(1) While exercising power under Section 10 read with Section 12 of the Act, the power of the appropriate government is administrative and not judicial or quasi-judicial.

(2) In exercising the power, the Government is only required to examine whether an industrial dispute exists or is apprehended. For this purpose, the Government can prima facie examine the matter to find out whether a dispute exists or not.

(3) The Government can refuse to make a reference only if it finds that the dispute sought to be raised is frivolous or vexatious or that the dispute sought to be raised, if referred for adjudication, will have grave adverse consequences on the entire industry in the region.

(4) In the garb of examination of prima *facie* issue of existence or apprehension of the dispute, the Government cannot delve into merits of the dispute and make an adjudication of the merits or demerits of the action of the employer. The Government cannot usurp the jurisdiction of the Labour Court/Industrial Tribunal to adjudicate the dispute.

(5) In cases of termination of the services of the workmen on the basis of an enquiry by the employer, the Government cannot decline to make reference on the ground that a proper domestic/departmental enquiry has been made by the employer or that the charge has been proved or that the allegation found proved is serious in nature or that the punishment awarded to the workman is just and proper. The Government also cannot refuse to make reference on the ground that the action taken by the employer does not suffer from lack of *bona fides* or that the workman is guilty of a grave misconduct. All these matters lie in the exclusive

domain of the labour Courts/Industrial Tribunals which can exercise their power under Section 11-A of the Act as interpreted in Workmen of M/s Firestone Tyre and Rubber Co. Vs. The Management (supra).

(6) The Government cannot refuse to make a reference merely because the employer pleads that the relations between the parties are strained. This is again an issue which has to be examined by the Labour Court/ Industrial Tribunal while considering the question of relief to be granted to the workman in case the action of the employer is found to be illegal or unjustified.

(7) The Government is duty bound to apply its mind to the demand made by the workman, the reply of the employer and the failure report and is under a statutory obligation to record reasons and communicate the same to the parties where it declines to make reference and if the Courts finds that the reasons are extraneous or irrelevant, the decisions of the Government will be liable to be nullified.'

(15) The D. B. therefore, held that the order passed by the Labour Commissioner was based on a wholly extraneous reasons, namely that the dismissal of the workman is justified because he has been found guilty of serious misconduct and therefore, the Government has made an adjudication on the merits of the dispute and recorded a finding that dismissal was justified and therefore, usurped the jurisdiction which vests in the Labour Court/ Industrial Tribunal to adjudicate upon a dispute under the Act with particular reference to Section 11-A. The Division Bench also considered the judgment of *The M. P. Irrigation Karamchari Sangh* v. *State of M.P.and another* (3). It was a case in which the employees of Chambal Hydel Irrigation Scheme (MP) were entitled to dearness allowance equal to that of Central Government employees and that whether they were entitled to Chambal Allowance and refusal to refer questions by State Government on ground that (i) Government could not bear additional burden of dearness allowance and (ii) that Chambal allowance was included in consolidated pay given to employees, was held to be in excess of the jurisdiction of the State Government

(3) AIR 1985 SC 860

by deciding the question unilaterally. It was observed as under :—

> "7. There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory.
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> 8. We have no hesitation to hold that in this case, the Government had exceeded its jurisdiction in refusing to refer the dispute to the Tribunal by making its own assessment unilaterally of the reasonableness of the demands on merits. The High Court erred in accepting the plea of the Government that refusal to refer the demands in this case was justified. The demands raised in this case have necessarily to be decided by the appropriate tribunal on merits."

(16) In the case of *Ram Avtar Charm and others* Vs. *Surrender Chummier Charm* (4) it has been observed by the Supreme Court as under :—

> "If the Government performs an administrative act while either making or refusing to make a refernce under Section 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 Section10. 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 grounds irrelevant,

(4) AIR 1985 SC 915

extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review."

(17) The above two judgments of the Supreme Court were considered by the DB in the case of PALEU *(supra)*. The Judgment of the Division Bench of this court and the Judgment of Supreme Court quoted above go to show that the Government could not delve into merits of the case and make adjudiction. The question in this case was whether the petitioners were Helpers or badli workers and when this dispute was there, it should have been referred to the Labour Court. The Labour Court after considering the evidence could have come to a proper conclusion. This is not done and therefore, we cannot support the stand taken by the respondents in this case. In view of the judgment of Supreme Court and judgment of Division Bench of this court in PALEU case *(supra)* we do not go to consider the other judgments cited by learned Counsel for the petitioners.

(18) The next question argued on behalf of the respondents is that reference could not be made on a dispute raised by a single workman. Learned counsel for the respondents has argued that this case is governed under Section 2(k) of the Act. The DB of this court in the case of PALEU *(supra)* has considered this point also. There is certain discussion on Section 2(k) of the Act. This provision caused hardship in the matter of dismissal, discharge, retrenchment etc.because the individual workman could not avail the remedy under the Act without the espousal of his cause by the Union or by a substantial number of employees of the establishment. Therefore, the Parliament amended the Act by Industrial Disputes (Amendment Act) 1965 which was brought into force w.e.f. 1st December, 1965. By this amendment, Section 2-A came to be inserted in the Act. By virtue of this section, any dispute or difference between a workman and his employer in relation to dismissal, discharge, retrenchment or termination of his service is now deemed to be an industrial dispute even though such dispute may not be covered by Section 2(k). Thus, by legislative fiction, an individual dispute has been converted into an industrial dispute. Thus after insertion of Section 2-A, Section 2(k) and Section 2-A will have to be read together while determining whether a dispute raised by the workman including a dispute raised by an individual workman in relation to termination of his service is an industrial dispute for the purpose of the Act.

(19) In view of the above position, it is clear that Section 2-A of the Act is applicable to the petitioners as they have raised the dispute individually.

(20) No further ground has been argued.

(21) The writ petitions, therefore, deserve to be allowed. As a result, we allow these writ petitions and quash the impugned orders (Annexure P/4 passed by respondent No. 3 and remand the matters to respondent No. 3 for reconsideration of the matter in accordance with law and pass necessary orders.

R.N.R.

Before R.S. Mongia and K.C. Gupta, JJ

DALJIT SINGH AND OTHERS,—*Petitioners*

versus

P.S.E.B. AND ANOTHER,—*Respondents*

C.W.P. No. 7734 of 2000

29th November, 2000

Constitution of India, 1950—Art. 226—Punjab State Electricity Board Technical Service Class III Rules, 1996—Rl. 9—Instructions dated 3rd August, 1988 issued by the Board—Recruitment to the posts of Auxillary Plant Attendants (A.P.As)—Rl. 9 of 1996 Rules provides qualification Matric with ITI & experience on the post of Plant Attendant to become eligible for the post of A.P.A.—Petitioners acquired experience as Plant Attendant prior to acquiring the prescribed qualifications—Respondents making the petitioners ineligible by ignoring their experience as Plant Attendant acquired prior to obtaining the prescribed qualifications—Rules do not provide that the experience has to be after passing the prescribed qualification—Instructions dated 3rd August, 1988 have no bearing after framing of the 1996 Rules—Writ allowed directing the respondents to consider the entire period of experience whether acquired prior to or after passing the prescribed qualifications.