(24) For the reasons recorded above, this writ petition is allowed. Order of respondents Annexure P.3 which is based Annexure R.3, declaring the election of the petitioner as void is quashed. There will be no order as to costs. The four ballot papers which were separated are ordered to be delivered to Shri S. S. Shergill, Deputy Advocate General, Punjab, at an early date.

Dasti on payment.

S.C.K.

Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.

MOHD. AMMED IIYAS,—*Petitioner.*

versus

HARYANA TOURISM CORPORATION & OTHERS,—*Respondents.*

C.W.P. No. 15368 *of* 1993.

23rd September, 1994.

Constitution of India, 1950—*Arts.* 226/227—*Industrial Disputes Act,* 1947—*S.* 10(1) *Reference—Whether the appropriate Court can go into a disputed question of fact while deciding a reference application U/s* 10(1) *of the Industrial Disputes Act* ?

Held, that Section 10(1) of the Industrial Disputes Act gives powers to the appropriate Government to refer the dispute. No doubt, the Government has to consider the matter as to whether a reference sought is to be granted or declined i.e. it has to record reasons for not making the reference. While deciding the reference, the Appropriate Government cannot decide the disputed question of fact. All that is envisaged by section 10(1) is as to whether the dispute raised *prima facie* merits adjudication or the same is patently frivolous or clearly belated. The Apex Court in *Bombay Union of Journalists and others* v. *The State of Bombay and another, A.I.R.* 1964 Supreme Court 1617, examined in detail the ambit and scope of section 10(1) of the Industrial Disputes Act.

(Para 7)

N. K. Nagar, Advocate, *for the Petitioner.*

L. N. Verma, Advocate and Ashok Verma, Advocate, *for the Respondents.*

JUDGMENT

N. K. Kapoor, J.

(1) The petitioner seeks quashing of Annexures P-1, P-5 and P-10 with a further declaration that rule 9(b) of the Standing Orders framed by respondents Nos. 1 and 2 be declared *ultra vires* of the Constitution of India and also for issuance of writ of *mandamus* directing respondent No. 4 to refer the matter to the Labour Court for adjudication.

(2) The petitioner was selected and appointed as Counter Incharge under respondent No. 1,—*vide* appointment letter dated 15th June, 1977. According to the petitioner, he had been performing his duties diligently without any complaint from any quarter. is in the month of April, 1990 that he was transferred from Balabhgarh to Bahadurgarh where he joined on 19th April, 1990. It has been further stated that tourist complex was under construction and so there was no normal job for the petitioner to attend. It has been further stated that the petitioner had been transferred thirteen times without any cause or reason on account of which he was mentally disturbed and so he did not attend to his duties for a short duration. It is on 5th August, 1990 when he improved from his mental depression and came to the office but was not assigned any duty. It is on 12th August, 1990 that a copy of order of termination dated 3rd August, 1990 was served upon him, which was challenged by the petitioner to be wholly illegal and unwarranted. A demand notice was filed in the Court of Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory, Chandigarh, on 5th April, 1991, which was rejected on 2nd July, 1991. This order was challenged in Civil Writ Petition No. 1753 of 1992 and the Court was pleased to direct respondents Nos. 1 and 2 to refer the case of the petitioner to the State Government for the purpose of considering whether the dispute, raised by the petitioner, deserves to be adjudicated upon by the Labour Court. *Vide* communication dated 27th August, 1993 (Annexure P-10), reference was declined by the Government, which is being impugned in the present writ petition.

(3) Pursuant to notice of motion issued by the Court, written statement has been filed on behalf of respondents Nos. 1 to 3. Various material averments made in the petition have been controverted. It has been further stated that on petitioner's transfer from Balabhgarh to Bahadurgarh,—*vide* order dated 30th March,

1990, he joined at Bahadurgarh on 19th April, 1990 and worked there only for one day and remained absent thereafter without any authorized leave or any intimation in this regard. He contravened the provisions contained in clause 9(b) of the Certified Standing Orders framed by the Haryana Tourism Corporation. The relevant clause reads as :—

> "If a worker is absent without permission for more than 8 days, he should be deemed to have left service voluntarily."

Thus, as the petitioner's absence was without any cause, the respondent rightly came to the conclusion that the petitioner had abandoned the job and so the order passed is in conformity with clause 9(b) of the Standing Orders referred to above. The respondents justified the order passed by the Joint Secretary, Labour Department, Government of Haryana, declining/rejecting the reference sought, on the ground that the same is in conformity with law.

(4) Challenging the order, Annexure P-10, it has been urged that respondent No. 5 had no jurisdiction to decline the reference sought and, in fact, had only an administrative role to play, i.e., to examine *prima facie* whether the petitioner comes within the court of a workman and whether the dispute, raised by the workman, merits adjudication. This way, the Secretary, Labour Department, Government of Haryana, travelled beyond its powers and thus the order Annexure P-10 is illegal and unsustainable. Challenging the validity of the order passed by the Haryana Tourism Corporation under rule 9(b) of the Standing Orders, the counsel urged that the rule is clearly violative of Article 14 of the Constitution of India and otherwise also violates the principles of natural justice as the same does not envisage any enquiry with regard to the absence of the workman, before an order is passed in this regard. Reliance was placed upon *Telco Convoy Drivers Mazdoor Sangh and another* v. *State of Bihar and others* (1), *Punjab Land Development and Reclamation Corporation Limited, Chandigarh* v. *Presiding Officer, Labour Court, Chandigarh, and others* (2), and *D. K. Yadav* v. *J.M.A. Industries Limited* (3).

(5) The learned counsel for the respondents urged that the order declining the reference is just and proper in the facts and circumstances of the present case. According to the learned counsel, the

(1) 1989 (2) Recent Services Judgments 674.
(2) (1990) 3 S.C. Cases 682.
(3) 1993 (3) S.C. Cases 259.

petitioner worked at Bahadurgarh for a day, i.e., on 19th April, 1990 and thereafter did not attend to his duties for almost four months. His absence was without any information to the Department. According to the counsel, the Standing Orders govern the service conditions of the petitioner,—*vide* clause 9(b) of the Standing Orders. In case a worker is absent without permission for more than 8 days, he is deemed to have left service voluntarily. In the present case, the petitioner remained absent for 43 days and that too without any leave nor any information was furnished by him in this regard till the communication of the formal order by the respondent. Since the petitioner voluntarily left the service, such a workman does not come within the ambit of 'retrenchment' as defined in the Industrial Disputes Act and, as such, non-compliance of the provisions of Section 25-F of the Industrial Disputes Act is not attracted in the present case. Justifying the declining of the reference by the Government, Support was sought by the decision of the Apex Court in *Bombay Union of Journalists and others* v. *The State of Bombay and another* (4).

(6) We have heard the learned counsel for the parties and perused the various documents referred to during the course of their submissions. Facts are not in dispute, i.e., the petitioner joined as Counter Incharge on 15th June, 1977 and had been transferred to a number of places a span of about 13 years, lastly to Bahadurgarh where he abstained from his duty for about 43 days. Admittedly, the petitioner did not seek any permission for leave nor in any manner intimated the respondent in this regard. The respondent, on the basis of rule 9(b) of the Standing Orders, presumed that the petitioner has voluntarily left the service, since he was absent for more than 8 days and this information was sent to the petitioner,—*vide* communication dated 3rd August, 1990 (Annexure P-1). According to the petitioner, such an order could not be passed without complying with the provisions of the Industrial Disputes Act whereas the respondents contend that the Standing Orders framed by the Haryana Tourism Corporation govern the service conditions of its employees and so the order passed being in terms of the Standing Orders cannot be deemed to be either unwarranted or violative of principles of natural justice. The respondents have construed the petitioner's absence for more than 8 days

(4) A.I.R. 1964 S.C. 1617.

to be a case of voluntarily abandoning the job. Section 2(oo) of the Industrial Disputes Act reads :—

> "'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the service of a workman on the ground of continued ill-health;"

A bare perusal of the definition reveals that it excludes from its ambit voluntary retirement of the workman or retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman contains a stipulation in this behalf. Thus, but for this exclusion, the aforementioned categories would have fallen in the all-embracing definition of retrenchment. In the present case, a presumption is being drawn against the petitioner of his voluntarily leaving the service in view of rule 9(b) of the Standing Orders, otherwise there is no material on record to infer that the workman has voluntarily retired from the service. In any case, this is a matter which an appropriate Court has to examine on the basis of the evidence led.

(7) Section 10(1) of the Industrial Disputes Act gives powers to the appropriate Government to refer the dispute. No doubt, the Government has to consider the matter as to whether a reference sought is to be granted or declined, i.e.. it has to record reasons for not making the reference. While deciding the reference, the Appropriate Government cannot decide the disputed question of fact. All that is envisaged by section 10(1) is as to whether the dispute raised *prima facie* merits adjudication or the same is patently frivolous or

clearly belated. The Apex Court in *Bombay Union of Journalists and others* v. *The State of Bombay and another* (5), examined in detail the ambit and scope of section 10(1) of the Industrial Disputes Act. The relevant observations are as under :—

> "It is true that if the dispute in question raises questions of law, 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 the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even *prima facie* the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5) or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a *prima facie* examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under Section 10(1), and so, the argument that the appropriate Government exceeded its jurisdiction in expressing its *prima facie* view on the nature of the termination of services of appellants 2 and 3, cannot be accepted."

(8) In *D. K. Yadav* v. *J.M.A. Industries Limited* (6), the Apex Court examined the right of private employer to terminate service under the Standing Orders and held that the Standing Orders must be in consonance with the principles of natural justice and mandates of Articles 14 and 21 of the Constitution of India. It further held that automatic termination under the Certified Standing Orders on absence without or beyond the period of sanctioned leave for more

(5) A.I.R. 1964 S.C. 1617.
(6) 1993 (3) S.C. Cases 259.

than 8 days infringes the principles of natural justice, as no opportunity was given to the workman to explain his conduct. These and other related matters have yet to be examined by the Court on the basis of evidence led by the respective parties. Any comment on the merits of the various contentions raised by the respective counsel would indeed prejudice the case of one or the other party. All the same, there is no manner of doubt that the various points canvassed by the learned counsel for the petitioner need close scrutiny and so, the matter ought to have been referred by the Government to an appropriate Industrial Tribunal for its adjudication. Accordingly, while accepting the writ petition, we direct the respondent-Government of Haryana to refer the dispute for adjudication before an appropriate Labour Court within two months from the date of passing of this order. No costs.

J.S.T.

Before Hon'ble A. P. Chowdhri & Swatanter Kumar, JJ.

SARITA KUMARI & OTHERS,—*Petitioners.*

versus

THE PUNJAB STATE ELECTRICITY BOARD AND OTHERS,—*Respondents.*

C.W.P. No. 13299 of 1994.

15th December, 1994.

Constitution of India, 1950—*Arts.* 226/227—*Stay of Departmental proceedings during pendency of criminal trial—Guidelines for stay stated—Where scope of charge-sheet and penal proceedings is different, Stay of domestic enquiry is unwarranted—Both proceedings can run similtaneously where such proceedings do not prejudice the criminal trial.*

Held, that no principles of natural justice are violated nor they require that an employer must await for the decision of the criminal Court, before taking action against an employee. We have seen that the same set of facts are not the basis in the present case for lodging of F.I.R. and initiation of departmental proceedings by serving the said charge-sheet. The charge-sheet mainly refers to overlooking the wrong entries made in the C.C.R. Book, avoiding purposely the reconciliation total of S.C.A. register entries during the relevant period and not getting the daily totals of the C.C.R. book. It is indicated in the charge-sheet that the petitioners have been avoiding their prime duties and these acts constitute misconduct and it has