

Anang Pal and others v. Haryana State Electricity Board 79
and another (N. K. Sodhi, J.)

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

ANANG PAL AND OTHERS,—Petitioners.

versus

HARYANA STATE ELECTRICITY BOARD THROUGH SECRETARY H.S.E.B. BUILDING, SECTOR-6, PANCHKULA, AND ANOTHER,—Respondents.

C.W.P. 8769 of 1989.

7th September, 1995.

Constitution of India, 1950—Articles 226/227—Industrial Employment (Standing Orders) Act 1946—Reinstatement and subsequent transfer—Board not competent to transfer its Employees in view of the standing orders.

(Para 7)

Held, that if the model standing orders prevail over the regulations, what needs to be seen is whether such Standing Orders had given any power to the Board to transfer its workmen. A plain reading of the model standing orders as prescribed by the State of Haryana makes it clear that there is no power of transfer given to the employer. In the absence of any such power it is not open to the Board to transfer any of its workers no matter its action may be otherwise justified.

Constitution of India—1950—Articles 226/227—Industrial Employment (Standing Orders) Punjab (Haryana first amendment) 1969—Petitioners Employed by Thermal Plant, Faridabad—Whether Establishment to be governed by Standing Orders framed under Act of 1946 are regulations framed by the Board—Held Standing Orders to over ride regulations framed.

(Paras 6 & 7)

Held, that The Thermal Plant i.e. the industrial establishment where the petitioners are working is thus governed by the model standing orders and also by the regulations framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948.

Further held, that the question that now arises is as to which of the two will govern the industrial establishment. In my opinion, the model standing orders framed under the 1946 Act will over ride the regulations framed by the Board and that the latter will have no effect as they have not been notified by the State Government under Section 13-B of the 1946 Act. The 1946 Act is a special law in regard to matters enumerated in the Schedule thereto and that must prevail over the general provisions contained in the Electricity (Supply) Act, 1948. It is for this reason that the model standing orders will over ride the regulations framed by the Board.

Abha Rathore, Advocate, for the Petitioner.

D. D. Gupta, Advocate, for the Respondent.

JUDGMENT

N. K. Sodhi, J.

(1) Petitioners were appointed as T-mates on work charge basis some time in the years 1980 and 1981 in the Thermal Plant, Faridabad which is a unit of the Haryana State Electricity Board (for short the Board). According to the Board, they were being appointed for a fixed period from time to time in connection with the pre operational testing work of the third unit of the Thermal Plant, which was commissioned in the year 1981-82 and on completion of the testing work their contract of employment came to an end on August 31, 1982 which was not renewed thereafter. This termination of employment gave rise to some industrial disputes which were raised by each of the petitioners individually under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act). The disputes were referred for adjudication under subsection (1) of Section 10 of the Act to the Presiding Officer, Labour Court, Faridabad. Since the issues arising in the cases were the same, all the references were consolidated. The Labour Court as per its award dated November 16, 1987 came to the conclusion that their services were wrongly terminated inasmuch as the Board did not comply with the provisions of Section 25-F of the Act. The management was directed to reinstate them with continuity of service. The Board challenged the aforesaid award by filing Civil Writ Petitions in this Court which were dismissed on July 6, 1995. During the pendency of the aforesaid writ petitions the petitioners were reinstated in terms of the aforesaid award and thereafter transferred from the office of Executive Engineer, Thermal Plant, Faridabad to the office of Superintending Engineer (OP) Circle, Faridabad. They were subjected to repeated transfers first from one office to the other within the town of Faridabad and subsequently all the petitioners have been transferred from the office of Executive Engineer (P&S) Thermal, Faridabad to the office of Superintending Engineer (OP) Circle, Narnaul. It is this order of transfer that has been challenged by the petitioners in the present petition filed under Article 226 of the Constitution. While admitting the writ petition, the Motion Bench stayed operation of the impugned order of transfer with the result that the petitioners continued working at their old station of posting.

(2) While challenging the impugned order of transfer, Mrs. Abha Rathore, learned counsel for the petitioners contended that the Board had no power to transfer any of the petitioners who

are workmen within the meaning of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the 1946 Act). The argument is that the third unit of the Thermal Plant where the petitioners were employed is an 'industrial establishment' within the meaning of 1946 Act and thus governed by the Model Standing Orders framed by the State Government which operate in the absence of any certified standing orders by the Board and that the Model Standing Orders do not give any power to the Board to transfer its workmen from one office to another or from one station to another.

(3) Mr. D. D. Gupta, Advocate appearing for the Board, however submitted that the petitioners who had been employed during the pre-operational testing functions of the third unit of the Thermal Plant were work charged employees and their services came to an end on August 31, 1982 when the work for which they had been employed was over. Since the Labour Court directed the reinstatement of the petitioners, they were taken back in compliance with the award but as there was no work for them at the Thermal Plant, they were adjusted/accommodated in the office of the Board located in the nearby Districts like Gurgaon, Mohindergarh etc. and it is for this reason that they were transferred. According to the learned counsel the action of the Board in transferring them is wholly justified and that the Board has *bone fide* made efforts to accommodate the petitioners wherever work was available for them. It is admitted that the Board has no certified standing orders for its employees working at the Thermal Plant or in any other industrial establishment owned by it and that the service conditions of all the employees i.e. technical, non-technical, administrative and others are governed by the regulations framed by the Board in exercise of its powers under Section 79(c) of the Electricity (Supply) Act, 1948.

(4) From the rival contentions advanced by counsel for the parties, the question that arises for determination is whether the Board has the power to transfer its workmen who are employed in an industrial establishment within the meaning of 1946 Act.

(5) The 1946 Act was enacted with a view to require employers in industrial establishments to define with a sufficient precision the conditions of employment under them and make the said conditions known to the workmen employed by them. To achieve this object

an employer is required to submit within six months from the date on which the 1946 Act becomes applicable to an industrial establishment five copies of the draft standing orders proposed by him for adoption in the industrial establishment. A copy of this draft is also supplied to the workmen or to the trade union representing them. Provision has to be made in the draft for every matter set out in the Schedule to the 1946 Act and where model standing orders have been prescribed, the draft shall as far as applicable be in conformity with such model. They are then certified after the Certifying Officers adjudicates upon the fairness and reasonableness of the provisions contained therein. The standing orders after they are certified become applicable to the industrial establishment and govern the conditions of employment of the workers employed therein. Section 12-A of the 1946 Act requires that after the said Act becomes applicable to an industrial establishment and till the standing orders are finally certified and come into operation, the model standing orders shall apply to that establishment. In the present case, it cannot be disputed that the Thermal Plant where the petitioners were employed is a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 and, therefore, an industrial establishment within the meaning of clause (e) of Section 2 of the 1946 Act. This being so the Thermal Plant is governed by the provisions of the 1946 Act. In the affidavit filed by Shri H. S. Dahiya, Chief Engineer, Thermal Plant, Faridabad as additional submissions, it is stated that the Board has no certified standing orders for its employees working in the Thermal Plant. In this view of the matter, the model standing orders prescribed by the State of Haryana under the Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1969 shall apply to the Thermal Plant, Faridabad. It may be mentioned that in terms of Section 13-B of the 1946 Act the same does not apply to an industrial establishment if the workmen employed therein are governed by any of the Civil Services Rules mentioned in the Section or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official gazette. According to the affidavit of the Chief Engineer, employees of the Board including the petitioner are governed by the regulations framed by the Board in exercise of the powers conferred on it under Section 79(c) of the Electricity (Supply) Act, 1948. These regulations have not been notified under Section 13-B of the 1946 Act by the State Government in the official gazette and, therefore, they do not oust the applicability of the 1946 Act to the Thermal Plant, Faridabad. The Thermal Plant i.e. the industrial establishment where the petitioners are working is thus governed by the model standing orders

and also by the regulations framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948.-

(6) The question that now arises is as to which of the two will govern the industrial establishment. In my opinion, the model standing orders framed under the 1946 Act will over ride the regulations framed by the Board and that the latter will have no effect as they have not been notified by the State Government under Section 13-B of the 1946 Act. The 1946 Act is a special law in regard to matters enumerated in the Schedule thereto and that must prevail over the general provisions contained in the Electricity (Supply) Act, 1948. It is for this reason that the model standing orders will over ride the regulations framed by the Board. The view that I am taking finds support from the decision of the Supreme Court in *The U.P. State Electricity Board and another v. Hari Shankar Jain and others* (1).

(7) Now if the model standing orders prevail over the regulations, what needs to be seen is whether such Standing Orders had given any power to the Board to transfer its workmen. A plain reading of the model standing orders as prescribed by the State of Haryana makes it clear that there is no power of transfer given to the employer. In the absence of any such power it is not open to the Board to transfer any of its workers no matter its action may be otherwise justified. It will be seen that the certified Standing Orders have to contain provisions in regard to matters set out in the Schedule to the 1946 Act. A look at that Schedule also makes it clear that the power to transfer a workman from one industrial establishment to another or from one office to another is not mentioned therein. As a matter of fact, the employers in industrial establishments governed by the 1946 Act have no power to transfer their workmen. A provision regarding transfer of industrial workers cannot be made in any Standing Orders unless the Schedule to the 1946 Act is appropriately amended. It is well settled that the Standing Orders can contain provisions only with regard to those matters which find mention in the Schedule to the 1946 Act and no other. Following observations of Their Lordships of the Supreme Court in *Rohtak and Hissar Districts Electric Supply Co. Limited versus State of Uttar Pradesh and others* A.I.R. 1966 Supreme Court 1471 are quite pertinent in this regard :—

“Then in regard to the matters which may be covered by the Standing Orders, it is not possible to accept the argument

(1) 1978 Lab. I.C. 1957.

that the draft Standing Orders can relate to matters outside the Schedule. Take, for instance, the case of some of the draft Standing Orders which the appellant wanted to introduce; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two Standing Orders were included in the draft of the appellant as Nos. 10 and 11. These two provisions do not appear to fall under any of the items in the Schedule; and so, the certifying authorities were quite justified in not including them in the certified Standing Orders."

In the result, it must be held that the Board had no power to transfer the petitioners.

Before concluding it may be mentioned that the stand taken by the Board is that the petitioners had to be transferred to the neighbouring Districts because there was no work available for them at the Thermal Plant. Since I have held that the Board had no power to transfer the petitioners, there is no option left but to quash the impugned order of transfer. It will, however, be open to the Board to retrench the petitioners in accordance with law in case it has no work for them at the Thermal Plant.

(8) For the reasons recorded above, the writ petition is allowed and the impugned orders of transfer quashed. The parties are left to bear their own costs.

J.S.T.

Before Hon'ble Mrs. Harmohinder Kaur Sandhu, J.
M/S SOLAR SYNDICATE, DUNGRI,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Crl. M.No. 9335-M of 1992

7th October, 1993

Code of Criminal Procedure, 1973—S. 482—Insecticides Act, 1968—S. 24(3)—Quashing of complaint—Insecticide misbranded—Sample taken in June, 1988—Expiry date May, 1990 and complaint filed in August, 1990 after expiry of shelf life—Denied opportunity to controvert the correctness of report of the Insecticide Analyst—Complaint liable to be quashed.

Held. that under Section 24 of the Act, a report signed by the Insecticide Analyst is an evidence of the fact stated therein and such evidence is conclusive unless the person from whom the sample was taken, notifies in writing within twenty-five days of the receipt of a copy of the report his intention to adduce evidence in contravention of the report. He can controvert the report of the Insecticide