

**Management of the Ambala Cantonment Electric Supply Corporation Ltd.
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explanation given by the petitioner was never considered by the punishing authority, but the Haryana Government alone which had no disciplinary powers in regard to the petitioner. No reasons are given by the State Government and the only order passed is Annexure "B", which is not the least speaking one.

(5) In the result, the conclusion is inevitable that the impugned action of ordering recovery of any amount from the salary of the petitioner is violative of the rules of natural justice and cannot be upheld. The writ petition is, therefore, allowed with costs and an appropriate writ directed to issue quashing the impugned order (Annexure "B") and prohibiting the respondents from recovering any amount from the petitioner in pursuance of the said order. The costs are assessed at Rs. 100.

N. K. S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Gurdev Singh, J.

MANAGEMENT OF THE AMBALA CANTONMENT ELECTRIC SUPPLY CORPORATION LTD.,—Appellant.

versus.

WORKMEN OF THE AMBALA CANTONMENT ELECTRIC SUPPLY CORPORATION LTD.,—Respondents.

Letters Patent Appeal No. 713 of 1970

April 27, 1972.

Industrial Disputes Act (XIV of 1947)—Sections 10(1) and (4), 25FF and 33(c)—Indian Electricity Act (IX of 1910)—Sections 6 and 7—Workmen's demand for continuity in service and protection of wages referred to Industrial Tribunal—State Government unaware of the demand of the workmen regarding retrenchment compensation—Tribunal—Whether can award such compensation—Section 25FF—Whether violative of Article 14 of the Constitution.

Held, that sub-section (4) of section 10 of the Industrial Disputes Act, 1947, lays down that when an industrial dispute is referred to the Tribunal, it shall confine its adjudication to those points that have been specified by the Government. However, the section also authorises the Tribunal to go

into the "matters incidental thereto". If the dispute specified in the State Government's notification making the reference is not only confined to the workmen's demand for continuity of service and protection of their wages but is for the protection of their other conditions of service, as well, the claim for compensation for retrenchment is one of such conditions of service, to which the Tribunal has to apply its mind. Even if the State Government is not aware of the specific demand for retrenchment compensation made by the workmen, yet it is competent for the Government to call upon the Tribunal to adjudicate upon all the rights of the workmen. Moreover, the demand for retrenchment compensation, is incidental to the main questions regarding the continuity of service referred to the Tribunal and this relief can be granted as a consequential relief. Hence where the workmen's demand for continuity in service and protection of their service and other conditions of service is referred to the Tribunal for adjudication, the latter can award retrenchment compensation to the workmen. (Para 19).

Held, that section 25FF of the Act recognises the right of the workmen to compensation in case of transfer of an undertaking not only by agreement but by operation of law as well. There is nothing in it that violates the guarantee of equality before law and equal protection of the laws provided under Article 14 of the Constitution. Thus section 25FF is not violative of Article 14 of the Constitution. (Para 13).

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice Bal Raj Tuli dated 25th September, 1970 passed in Civil Writ No. 319 of 1967.

Jawala Dass, Advocate, for the appellant.

Bhagirath Dass, Advocate with B. K. Jhingan and S. K. Hirajie, Advocates, for respondent No. 6.

Mohinderjit Singh Sethi, Advocate for respondent No. 1.

JUDGMENT

Judgment of the Court was delivered by:—

GURDEV SINGH, J.—This appeal under clause 10 of the Letters Patent is directed against an order of a learned Single Judge of this Court, dated 25th of September, 1970, whereby the validity of the award of the industrial Tribunal, Punjab (Chandigarh), dated 12th of September, 1966, has been upheld.

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(2) To appreciate the controversy that has arisen before us it is necessary to briefly state the facts leading to this litigation. The dispute which has ultimately led to this appeal is between the workmen of the Ambala Cantonment Electric Supply Corporation Ltd., Ambala Cantonment, and the management of that Corporation. In the year 1935, the Punjab Government granted a licence for generation and distribution of electric energy within the limits of Ambala Cantonment to Messrs. B. R. Harman and Mohatta Ltd., The Mall, Lahore, for a period of 30 years. Under section 6 of the Indian Electricity Act, 1910, the State Government had the option to purchase the undertaking on the expiry of this term or later on the expiry of every subsequent period which in this case was fixed at 20 years. Later by the amendment of the Indian Electricity Act after the partition of the country, the Punjab State Electricity Board (hereinafter referred to as the Board) was given the first option to purchase the said undertaking instead of the State Government. Before this option could be exercised, in the year 1946, the appellant-Corporation (known as the Ambala Cantonment Electric Supply Corporation Ltd), purchased the undertaking from the original licensee. Some years later on the 24th of September, 1963, the respondent-Board in exercise of its option to purchase the undertaking served the requisite notice under section 6(1) of the Indian Electricity Act, 1910, read with clause 9 of the licence, to hand over the undertaking on the midnight between the 23rd and 24th of April, 1965.

(3) On the 1st of June, 1964, the appellant-Corporation in compliance with the demand made by the Board furnished various statements, including those containing particulars and other relevant service records of its employees, and on the 11th of June, 1964, the employees were served with notices intimating that the undertaking would be taken over by the Board on the midnight of 23rd and 24th of April, 1965. Thereupon, the workmen, who were in the employment of the appellant-Corporation, through their Union, known as The Ambala Cantonment Electric Supply Corporation Ltd., Workers Union (Registered), 4528-Dal Mandi Street, Ambala Cantonment, served on the Board a notice, demanding that the Board should allow continuity of service to every employee after taking over the undertaking and that their wages under the conditions of service and the benefits which they were receiving from the appellant-Corporation be fully protected. Before the undertaking could be

taken over by the Board, on the 18th of March, the appellant-Corporation served notices on its employees to collect from the office their wages up to the time of the taking over of the undertaking by the Board.

(4) The Board did not accept the employees' demands and refusing to take in its service all the employees of the Corporation as a part of the purchase called upon the employees to appear for interview, so that offers of appointment be made to such workmen as the Board considered fit for employment under it. As a result, of various employees of the Corporation were taken over, but treating their service by the Board as fresh entrants. Thus, the demands of the workmen for continuity of their service and protection of the pay, etc., drawn by them were virtually turned down.

(5) Thereupon on the 26th of April, 1965, the workmen served a notice (Annexure 'C'), making the following demands, upon the management of the Corporation:

- (i) One month's wages in lieu of the one month's notice for the termination of service.
- (ii) Retrenchment compensation equivalent to fifteen days' wages for every completed year of service or any part thereof in excess of six months.
- (iii) Wages in lieu of un-availed earned leave lying at the credit of each employee/workman up till 23rd April, 1965, and
- (iv) Any other dues lying with the Corporation unpaid in respect of any employee/workman.

(6) On the Corporation's refusal to concede any of these demands, conciliation proceedings under section 12 of the Industrial Disputes Act were taken by the Labour Commissioner, Punjab, but they were only on the basis of the first demand notice of the workmen, dated 24th of February, 1965, and it appears that the second demand notice, dated 26th of April, 1965, was never referred to in those proceedings, though the workmen had maintained before the Labour Commissioner that the conciliation proceedings were in respect of both the notices.

(7) The conciliation proceedings having failed the State Government by its notification, dated 20th of October, 1965, referred

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the dispute to the Industrial Tribunal, Punjab, Chandigarh. The dispute referred was stated in these words:—

“Whether the workmen transferred from Ambala Cantt. Electric Supply Corporation to the Punjab State Electricity Board are entitled to continuity of their services and protection of their wages and other conditions of service applicable to them before this transfer of Undertaking to the Board. If not, what other relief/compensation they were entitled to?”

(8) Alongwith this notification a copy of the demand notice, dated 24th of February, 1965, was sent to the Industrial Tribunal as well as to the parties, namely, the Corporation, the Board and the Workmen's Union.

(9) A statement of claim was filed on behalf of the workmen on the 16th of November, 1965, alongwith the relevant documents, to which a written statement was put in by the Corporation. The Board also filed a reply to the claim to which a rejoinder was filed by the appellants-Corporation.

(10) Besides contesting the claim of the workmen on merits, the Corporation challenged the jurisdiction of the Presiding Officer of the Industrial Tribunal Shri I. D. Pawar to proceed with the reference. This objection was, however, overruled by the Tribunal's order, dated 3rd of September, 1965. Thereafter, the matter in controversy before the Tribunal were put in the form of following issues:—

- (1) Whether the dispute in question is not an industrial dispute in so far as the Ambala Cantt., Electric Supply Corporation is concerned?
- (2) Is the State Electricity Board a successor-in-interest of the Ambala Cantt., Electric Supply Corporation? If so, what is its effect?
- (3) Whether the workmen or any of them were transferred from Ambala Cantt., Electric Supply Corporation to the Punjab State Electricity Board?
- (4) If issue No. 3 is decided against the workmen, is the reference invalid?

- (5) If issue No. 3 is decided in favour of the workmen whether the workmen transferred from Ambala Cantt. Electric Supply Corporation to the Punjab State Electricity Board are entitled to continuity of their service and protection of their wages and other conditions of service applicable to them before this transfer of undertaking to the Board? If not, to what other relief/compensation they were entitled to.
- (6) Is the claim for compensation under section 25FF of the Industrial Disputes Act within the scope of this reference, and if so, to what compensation if at all are the workmen entitled to?

(11) On trial of the various issues, the Tribunal announced its award on the 12th of September, 1965, (Annexure 'F'), directing the Corporation to pay to each of the workmen concerned, who had been in its continuous service for not less than one year immediately before the transfer of the Undertaking, compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months, and wages for the period of unavailed earned leave as provided in section 79 of the Indian Factories Act, 1948. No relief was, however, granted against the Board. Against the validity of this award, the Corporation approached this Court with a writ-petition under Articles 226 and 227 of the Constitution, which has been partly allowed by the learned Single Judge, on the finding that the workmen were not entitled to any compensation in lieu of earned leave not availed of by them before the undertaking was purchased by the Punjab State Electricity Board. Objections to the vires of section 25FF of the Industrial Disputes Act and the jurisdiction and constitution of the Tribunal were rejected. Besides rearguing these legal objections, learned counsel for the appellant Corporation, in assailing the award of the decision of the learned Single Judge before us, has vehemently contended that the reference made to the Tribunal did not include the claim for retrenchment compensation and, accordingly, the Tribunal was not competent to award anything to the workmen on that account. Before dealing with this matter the legal objections raised may first be disposed of.

(12) The industrial dispute in this case was referred to the Industrial Tribunal, Chandigarh, and the impugned award is by

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Mr. Ishwar Das Pawar, Presiding Officer of that Tribunal. It has been contended that the Industrial Tribunal, Chandigarh, had no legal existence as this Tribunal was not constituted on permanent basis but on *ad-hoc* basis on 1st March, 1963, when Shri K. L. Gosain, a retired Judge of this Court, was appointed its Presiding Officer and it came to an end with the expiration of the term of office of Shri Gosain. On reference to relevant notifications, we find no merit whatsoever in this plea. The Industrial Tribunal, Punjab, was first constituted by Notification No. 4194-C-Lab.-57/661-RA, published in the Punjab Government Gazette Extraordinary, dated 19th April, 1957, with headquarters at Jullundur. Shri Avtar Narain Gujral was then appointed its Presiding Officer. As long as Shri Avtar Narain presided over this Tribunal, its headquarters remained at Jullundur. Thereafter by a notification, dated 3rd of June, 1959, Mr. Kesho Ram Passey, another retired Judge of this Court, was appointed as its Presiding Officer and the headquarters of the Tribunal were shifted to Patiala. On the expiry of the term of office of Shri Passey, Mr. K. L. Gosain took over as Presiding Officer of that Tribunal and consequent upon his appointment the headquarters of the Tribunal were located at Chandigarh. It cannot be disputed that during all this period the Tribunal functioned for the whole of Punjab. None of these notifications indicates that the Tribunal was constituted for a specific or limited period. On the other hand, all these notifications clearly go to prove that the Tribunal continued to function and only its Presiding Officer changed from time to time. Mr. Ishwar Dass Pawar was appointed its Presiding Officer with headquarters at Chandigarh, by the Punjab Government Notification No. 6410-3-Lab. II/66/19868, dated 30th of June, 1966, and it was in that capacity that he dealt with the reference to which this appeal relates.

(13) The vires of section 25FF of the Industrial Disputes Act, 1947, have been challenged on the plea that this provision is violative of Article 14 of the Constitution. The precise argument raised is that whereas in the case of voluntary transfer of an undertaking the management by an agreement is free to contract with the purchaser in respect of the employees of the undertaking, no such right is allowed to the parties when the transfer of an undertaking is by operation of law as in this case. Reference in this connection is made to sections 6 and 7 of the Indian Electricity Act, 1910. As pointed

out by the learned Single Judge, neither of these two sections contains anything with regard to the taking over of the service of the employee of the undertaking by the State Electricity Board on exercising its option under section 6 of the Indian Electricity Act, and there is no bar to the parties arriving at an agreement about the employees of the undertaking. Section 25FF of the Industrial Disputes Act recognises the right of the workmen to compensation in case of transfer of an undertaking not only by agreement, but by operation of law as well and we do not find anything in it that violates the guarantee of equality before law and equal protection of the laws provided under Article 14 of the Constitution.

(14) This brings us to the consideration of the main grievance of the appellant that the Tribunal was not competent to award retrenchment compensation as no such dispute was ever referred to the Tribunal for adjudication and the remedy, if any, open to the workmen was that provided under section 33-C of the Act.

(15) The notification, dated 20th of October, 1965, by which reference was made, specified the dispute referred to in these words:

“Whether the workmen transferred from Ambala Cantt. Electricity Supply Corporation to the Punjab State Electricity Board are entitled to continuity of their services and protection of their wages and other conditions of service applicable to them before this transfer of Undertaking to the Board. If not, what other relief/compensation they were entitled to.”

Obviously there is no specific mention of any dispute with regard to the retrenchment compensation. Before this reference was made, the workmen had served two demand notices on the Punjab State Electricity Board as well as on the Ambala Cantt. Electric Supply Corporation, one on the 24th of February, 1965, and the other on the 26th of April, 1965. In the first notice which forms Annexure ‘B’ to the petition, the demands were stated in these words:

“(1) To afford continuity of service to every employee after taking over the Ambala Cantt. Electric Supply Corporation Ltd., Ambala Cantt. in accordance with the operation of the mandatory provisions of the Indian Electricity Act,

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1910 (as amended) for the purpose of seniority and other benefits while being in your employ.

- (2) To keep fully protected the prevalent wages and other conditions of service and benefits of each employee of the above Electric Undertaking when all the employees would be under your employ after taking over the complete charge of the Ambala Cantt. Electric Supply Corporation Ltd. Ambala Cantt."

(16) It was in the second notice (Annexure 'C' to the petition) dated 26th April, 1965, which was addressed to the Ambala Cantt. Electric Supply Corporation Ltd. alone, that further demands, including that of retrenchment compensation, were made. Their demands this time were:

- (i) One month's wages in lieu of one month's notice for the termination of service.
- (ii) Retrenchment compensation equivalent to fifteen days wages for every completed year of service or any part thereof in excess of six months.
- (iii) Wages in lieu of un-availed earned leave lying at the credit of each employee/workman upto 23rd April, 1965, and
- (iv) Any other dues lying with you unpaid in respect of any employee/workman.

(17) The learned Single Judge on going through the record has accepted the appellant's assertion that the second notice, which contained demand for compensation for retrenchment, was never sent to the State Government while asking it to refer the dispute to the Tribunal, and "the State Government did not have the notice of the workmen, dated 26th April, 1965, before it and did not apply its mind to its contents". But at the same time the learned Judge observed:

"It, however, appears that the Government, while making the reference, visualised that the answer to the main dispute referred, that is, whether the workmen were entitled to continuity of service and protection of their prevalent

wages and other conditions of service could be in the affirmative or in the negative. If the answer to it by the Industrial Tribunal was in the affirmative, there would have arisen no liability of the petitioner-company, but, in case the answer to that question was in the negative, the liability of the petitioner-Company was to be determined with regard to any relief that the workmen were entitled to under the statutes applicable to them. Rules 10-A and 10-B apply where the reference is made on the report of the Conciliation Officer or on an application by the employer or the workman, but there is no bar to the Government making a reference of the consequential matters arising as a result of the decision of the Industrial Tribunal or Labour Court one way or the other. In the present case the State Government referred the major industrial dispute as stated in the workmen's notice, dated February 24, 1965, for adjudication to the Tribunal and the second part of the dispute referred was by way of consequential relief depending on the answer to the first part of the matter referred. It cannot, therefore, be said that it was not within the competence of the Industrial Tribunal to determine whether the workmen were entitled to any other relief in case they were held not entitled to continuity of service and protection of their wages etc., as stated in the first part of the dispute mentioned in the notification. The adjudication of that matter by the Tribunal cannot, therefore, be held to be without jurisdiction."

(18) In view of the acceptance by the learned Single Judge of the appellant's averment that the notice, dated 26th April, 1965, which alone contained the demand for retrenchment compensation, was never sent to the Government or was before it when the reference was made, the short question that remains to be considered at this stage is, whether the State Government while making the reference was aware of the fact that there was a dispute between the parties about retrenchment compensation and the Tribunal to adjudicate upon it as well. It is an admitted fact that conciliation proceedings had taken place before the reference was made. Shri Harbans Raj Singh, the Chief Conciliation Officer, who conducted those proceedings did not claim that the notice, dated 26th of April, 1965, was sent by him to the Government alongwith his report or recommendation for reference, and the learned Single Judge has

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himself recorded the finding that there is no evidence to prove that this notice had accompanied the report of the Chief Conciliation Officer. To support this conclusion, the learned Single Judge has pertinently pointed out that had this notice been sent to the Government, a copy of this notice would have been sent by the Government to the appellant and the Punjab State Electricity Board along with a copy of the notification making the reference. On comparing the wording of the dispute stated in the notification, dated 20th of April, 1965, by which the matter was referred to the Industrial Tribunal, with the demands made in the workmen's notice, dated 24th of February, 1965, it becomes abundantly clear that the State Government while making the reference had applied its mind only to the demands set out in this notice. The last sentence of the subject-matter of dispute referred to the Tribunal, as stated in the notification, dated 20th of April, 1965, however, leaves no doubt that the State Government had called upon the Tribunal to determine if the workmen were entitled to any other relief or compensation in case their demand for continuity of service, protection of their wages and conditions of their service applicable to them before the transfer of the undertaking were not found to be tenable. Even though the State Government may not have been aware of the fact that a specific demand for retrenchment compensation had been made, yet it was competent to call upon the Tribunal to adjudicate upon the rights of the workmen consequent upon the transfer of the undertaking in which they were serving. In this view of the matter, we have no hesitation in agreeing with the observations of the learned Single Judge, reproduced above, holding that the reference made by the State Government authorised the Tribunal to adjudicate upon the workmen's claim for retrenchment compensation.

(19) It is true that sub-section (4) of section 10 of the Industrial Disputes Act lays down that the Tribunal shall confine its adjudication to those points that have been specified by the Government, yet at the same time it authorises the Tribunal to go into the "matters incidental thereto". The dispute specified in the State Government's notification making the reference is not confined to the workmen's demand for continuity of service and protection of their wages, but was for the protection of their other conditions of service as well, and, in our opinion, the claim for compensation for retrenchment is one of such conditions of service, to which the Tribunal had to

apply its mind. In fact, we find that this demand for retrenchment compensation was specifically made by the workmen in the statement of their claim filed before the Tribunal and the appellant was afforded an opportunity to reply to the same. Apart from this, we agree with the learned Single Judge that the question, whether the workmen were entitled to retrenchment compensation, was incidental to the main question that had been referred to the Tribunal and this relief could be granted as a consequential relief. We, accordingly, find no substance in the appellant's complaint that the Tribunal had outstepped its jurisdiction in awarding retrenchment compensation.

(20) In disputing the liability of the appellant for compensation for retrenchment, Mr. Jawala Dass contended that in view of the provisions of sections 6 and 7 of the Indian Electricity Act, 1910, section 25FF of the Industrial Disputes Act would not apply to the case, but the provisions of section 22FFF would govern it. This matter, however, stands concluded by a recent decision of their Lordships of the Supreme Court in *U.P. Electric Supply Company v. R. K. Shukla* (1), wherein it has been held that the liability to pay retrenchment compensation arising on transfer is not enforceable against the purchaser State Electricity Board, but it will attach to the purchase money payable to the Company in substitution for the undertaking. After noticing the relevant provisions, their Lordships observed:

"It is clear that when the undertaking vests in the purchaser, any debt, mortgage or similar obligation attaches to the purchase money in substitution of the undertaking. The liability to pay retrenchment compensation is a debt: If it arises on transfer it will attach to the purchase money payable to the Company 'in substitution for the undertaking.' Sections 6 and 7 of the Indian Electricity Act do not support the case of the Company that the liability is enforceable against the Board after it takes over the undertaking."

(21) This authority further negatives Mr. Jawala Dass's other contention that the workmen concerned should have invoked the provisions of section 33-C, as their Lordships have ruled that the Labour Court has no power to go into the question, whether there has been retrenchment, but it can only compute the compensation

(1) A.I.R. 1970 S.C. 237.

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when retrenchment is conceded. In this case, the appellant had never conceded that any compensation for retrenchment could be claimed by the workmen.

(22) In *Workmen of U.P. State Electricity Board v. Ganges Valley Electricity Supply Company and others* (2) also, their Lordships of the Supreme Court have ruled that the workmen were entitled to retrenchment compensation from the Company in which they were employed and not from the Board to which the undertaking had been transferred. It may be remembered that the reference was not only against the Board, but against the appellant as well and the Tribunal was competent to award the relief against the party that was found liable to meet the demands of the workmen.

(23) In view of the above discussion, I find no merit in this appeal and would dismiss the same with costs.

N. K. S.

APPELLATE CIVIL

Before A. D. Koshal, J.

M/S DEESONS ENGINEERS COMPANY,—Appellant

versus

M/S C. P. ENGINEERING COMPANY,—Respondent.

First Appeal From Order No. 258 of 1971

May 12, 1972.

Arbitration Act (X of 1940)—Sections 19 and 20—Court setting aside an award without any further directions—Reference to arbitration—Whether remains alive—Application under section 20—Whether can be made.

Held, that Chapter III of the Arbitration Act, 1940, envisages arbitration in cases where the parties to a dispute are not already in Court with regard thereto by way of a suit. Sub-section (1) of section 20 also lays down in unmistakable terms that it applies to arbitration agreements where the subject-matter thereof has not been taken to a Court through a suit. It is thus clear that an application under section 20 of the Act is not barred where no proceedings before the Court to which it is made are pending with regard to the subject-matter covered by such application. The fact of an award being set aside by the Court 'without any further directions' does