(b) If the sum specified in the policy as payable thereunder exceeds the sum payable under section 95(2), the maximum liability shall be the sum specified in the policy. Sub-section (4) of section 96 does not deal with the liability of the insurer but it confers right upon the insurer to recover an amount from the insured."

12. To conclude the answer to the question posed at the outset is rendered in the negative and it is held that the liability of the insurer for vehicles covered under section 95(2) would extend to the sum assured by the policy of insurance in consideration of the premiums paid.

13. The question of law having been answered in the above terms, the case would now go back for decision on merits before the learned Single Judge.

(Sd.) S. S. SANDHAWALIA,
Chief Justice.

D. S. Tewatia, J.—I agree.

N.K.S.

Before M. M. Punchhi, J.

THE AMRITSAR CENTRAL CO-OPERATIVE CONSUMER'S STORE LTD—*Petitioner*

versus

THE STATE OF PUNJAB and others—*Respondents.*

Civil Writ Petition No. 359 *of* 1973.

February 24, 1982.

Industrial Disputes Act (XIV *of* 1947)—*Sections* 10(1)(c) *and* 39—*Industrial dispute referred for adjudication by the Labour Commissioner—Notification authenticated by him in the name of the President of India—Labour Commissioner treating this notification* non est *and making another reference of the same dispute under his own signatures—Labour Commissioner—Whether could refer the same dispute again when once it stood referred.*

Held, that where the Labour Commissioner treating the first notification to be *non est*, had referred the same dispute again under his own signatures under section 10(1) (c) of the Industrial Disputes Act, 1947 to the Labour Court, it cannot be said that the second reference was a substitute of the first reference so as to attract any comment or complaint that the Government had with an ulterior motive withdrawn the first dispute and referred another dispute. The dispute in both the references not only in sum and substance but in letter and spirit was the same and it was more a matter of form than of essence. While making the second reference the Labour Commissioner referred the matter to the Labour Court under section 10(1) (c) of the Act. Thus, there was no existing dispute which was pending before the Labour Court in the eye of law when the second reference was made. (Paras 5 and 6).

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, direction or order be issued quashing the impugned Award of the Labour Court (Annexure A) as also the reference No. 131 of 1970 made by the State Government including all proceedings connected therewith as being without jurisdiction and illegal. Any other order may be passed which may be just and proper. Pending the decision of this writ petition the implementation of the impugned Award may be ordered to be stayed.

A. S. Kalra, Advocate, M. S. Gujral, Advocate, *for the Petitioner.*

Suresh Amba, Advocate, for A. G. Punjab.

JUDGMENT

M. M. Punchhi, J. (oral).

(1) This judgment will dispose of C.W.P. No. 399 of 1973 and C.W.P. No. 1747 of 1973 which are in the nature of cross-petitions.

(2) Facts giving rise thereto are these. The Amritsar Central Co-operative Consumers Store Limited, Amritsar (hereinafter referred to as the management) had in its employment Manohar Lal (hereinafter referred to as the workman) as a Salesman in one of its branches. On 22nd January, 1967, the workman was suspended from service. On that day, a criminal case was pending against the workman in which he was later acquitted by the criminal Court on 26th December, 1967. Since the branch in which the workman was

put on duty was running under loss, the management thought of closing that branch and as a result thereof, terminated his services on 5th February, 1968, as no longer required from the date of the suspension. The Amritsar General Labour Union, Putlighar, Amritsar, took up the case of the workman which resulted logically in a reference being made by the Government to the Labour Court, Jullundur, with regard to the termination of services of the workman. The Labour Court by its award, dated 24th August, 1972, decided the reference against the management, directing it to reinstate the workman and pay him back wages from 22nd January, 1967 (the date of his suspension) to 31st March, 1969 @ Rs. 150 per mensem. This award was published in the Punjab Government Gazette, dated 27th October, 1972. It is then that the management approached this Court by way of C.W.P. No. 359 of 1973 challenging the award.

(3) On the other hand, Manohar Lal, workman, being aggrieved against the award of the Labour Court, whereby he was refused back wages from 1st April, 1969 onwards till the date of the award of the Labour Court, approached this Court by way of C.W.P. No. 1747 of 1973. This petition was ordered to be heard along with the petition of the management and thus these matters can conveniently be now disposed of by a common judgment.

(4) The principal ground taken by the management against the award of the Labour Court is that the Punjab Government had initially referred this labour dispute to the Labour Court on 11th August, 1967, published in the Government Gazette, dated 25th August, 1967 and in the presence thereof, a fresh reference was made regarding the same dispute,—*vide* notification dated 1st June, 1970. It has also been pointed out that the second reference was not authenticated by any competent authority and the power has been exercised by the Labour Commissioner, Punjab, under section 10(1)(c) of the Industrial Disputes Act, 1947. The contention raised is two pronged inasmuch as it is said that the same dispute could not be referred again when once it stood referred and secondly that the authority referring the dispute lacked competence.

(5) In the return filed by the respondent Labour Commissioner, Punjab, the factual position with regard to this aspect of the matter is not disputed but it is claimed that the first reference dated 11th

August, 1967, was not in fact a proper and legal reference of the industrial dispute to the Labour Court, Jullundur, which was without jurisdiction. That reference not being valid, it is maintained that the dispute was validly referred,—*vide* notification dated 1st June, 1970 and on the basis of which the impugned award has been made. This argument again turns round on the competency of the officer authenticating the notification. Neither party has put on record the earlier notification dated 11th August, 1967, but seemingly, as argument developed it turns out to be that the said notification was considered to be invalid by the Government in view of a Single Bench decision of this Court reported in *Municipal Committee, Patiala* v. *The State of Punjab and others* (1). There, as in the present case, reference was signed by the Labour Commissioner on behalf of the President of India referring the dispute to the Labour Court. It was held in that precedent that the Labour Commissioner who authenticated the notification in the name of the President of India, had been delegated the powers of the State Government to refer an industrial dispute to the Labour Court, but did not authorise the Labour Commissioner to authenticate a notification issued in the name of the Governor, Punjab, or the President of India during the President's rule. It was held that the Labour Commissioner had thus no power to authenticate a notification in the name of the President of India but otherwise he could in his own name as a delegate of the State Government refer an industrial dispute to the Labour Court. Now, here while making the second reference, the Labour Commissioner as is apparent from th impugned award, referred the matter to the Labour Court under section 10(1)(c) of the Industrial Disputes Act. Thus there was no existing dispute which was pending before the Labour Court in the eye of law when the second reference was made. The contention as raised by the petitioner, is totally misconceived and has to be repelled.

(6) Even otherwise, though it would not affect the merits of the case, the view taken in the *Municipal Committee, Patiala case* (supra) does not seem to be good law any longer, in view of the Division Bench judgment of this Court in *M/s Bharat Textile Mills* v. *Punjab State and others* (2), in which the afore-referred decision was overruled. But be that apart, the Labour Commissioner treating the

(1) 1969 Current Law Journal 1000.
(2) (1980) P.L.R. 772.

first notificatino to be *non-est,* had referred the same dispute again under his own signatures under section 10(1)(c) to the Labour Court. In the circumstances, it cannot be said that the second reference was a substitute of the first reference so as to attract any comment or complaint that the Government had with an ulterior motive withdrawn the first dispute and referred another dispute. The dispute in both the references as stated before, not only in sum and substance but in letter and spirit was the same. It was more a matter of form than of essence.

(7) Besides the aforesaid point, no other point has been pressed by the learned counsel for the petitioner in CWP No. 359 of 1973, and the same having been repelled, the said petition merits dismissal.

(8) Now, with regard to C.W.P. No. 1747 of 1973, it is plain that the Labour Court granted back wages to the workman from the date of his suspension till 31st March, 1969 and denied him back wages from 1st April, 1969 till the date of the award. The law in this regard has been crystallised that ordinarily, a workman whose service has been illegally terminated, would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. See in this connection *M/s Hindustan Tin Works Pvt. Ltd.* v. *The Employees of M/s Hindustan Tin Works Pvt. Ltd. etc.* (3), and Full Bench decision of this Court in *Hari Palace* v. *The Presiding Officer etc.* (4). The Full Bench has further held that the party who would like the normal rule to be deviated from, must establish the circumstances necessitating departure. In other words, the management must normally pay back wages to the employee whose service was illegally terminated, unless it can establish the circumstances necessitating departure from the rule, by pleading and proving that the workman was gainfully employed during the enforced idleness. In the instant case, the Labour Court, for the period from 1st of April, 1969 to 30th of November, 1969, came to the conclusion that the workman was gainfully employed as a salesman on the shop of M/s. S. S. Duggal, Distributing Agents, Amritsar at the rate of Rs. 150/- per mensem. The Tribunal held that the cash memos from the period 16th of April, 1969 to 10th of September, 1969 were admittedly written by the workman which gave rise to the inference

(3) AIR 1979 S.C. 75.
(4) (1979) P.L.R. 720.

and the finding that he was gainfully empolyed. The learned counsel for the workman though likes to challenge this finding, is unable to do so in view of the positive finding recorded by the Labour Court, and this Court being not of appeal, cannot upset that finding merely on the placement of the onus for the Full Bench dictum. The fact remains that the Labour Court has found that the workman was gainfully employed during this period. On that score, no relief can be granted to the workman. However, with regard to the period from 1st December, 1969 till the date of award, there is an error apparent on the face of the record. The workman, in his statement, was put during cross-examination, questions with regard to his running a shop. He stated that his son aged 18 years was running the shop but he was not on good terms with his son though they were living together. From this the Labour Court deduced inference that the shop was that of the workman and since he had left the job fetching him Rs. 150/- per mensem, the presumption arose that the income from the shop was more than Rs. 150 per mensem. Learned counsel for the workman contends that the workman having sat at the shop of his son to assist him in business or to be living with his son during the days of distress, would not make him gainfully employed, and in any case even if it be suspected that he was gainfully employed on the mere suspicion that his son was just only 18 years, it was for the management to plead and prove that the workman was gainfully employed. Now, on this score, the learned counsel for the workman is on firm ground inasmuch as neither the management put up the plea that the shop which was being run at the place suggested, belonged to the workman and that he was running it for his own gain. The workman's statement that the shop was being run by his son aged 18 years does not displace that onus on the management. Thus, on the basis of the Full Bench decision afore-referred to, the workman is entitled for his back wages for the period 1st December, 1969 till the date of the award or till the date of reinstatement, as the case may be, in observance of the normal rule. Thus CWP No. 1747/1973 deserves acceptance though partially, to the extent afore-indicated.

(9) For the foregoing reasons, CWP No. 359 of 1973 is dismissel and CWP No. 1747/1973 is partially allowed, but in the circumstances of the case, there would be no order as to costs.

N.K.S.