

# **PUNJAB AND HARYANA HIGH COURT**

Bharat Starch and Chemicals, Ltd

Vs

Industrial Tribunal

(Bishan Narain, J.)

03.12.1957

## **ORDER**

**Bishan Narain, J.**

1. This petition under Article 226 of the Constitution has been filed by the Bharat Starch and Chemicals, Ltd., Yamunanagar, Jagadhri, District Ambala, challenging the validity of the order of the Industrial Tribunal, Punjab, dated 30 April 1957, whereby the application of the petitioner company under Section 33 of the Industrial Disputes Act has been rejected. The petitioner-company is an industrial establishment as defined in the Industrial Employment (Standing Orders) Act, 1946 (Act XX of 1946), hereinafter called the Act.

2. The respondent Sahib Singh is in the employment of the petitioner-company as a moulder since 1942. The company got certified "standing orders" under the Act in January 1951 and one of the standing orders is to the effect that at the discretion of the general manager a workman is liable to be transferred to any place which is under the management of the managing agents of the company. There was a dispute between the petitioning company and its workmen which has been referred to the industrial tribunal under the Industrial Disputes Act. This dispute is still pending. During the pendency of this dispute the general manager of the company transferred Sahib Singh to Barakar Engineering and Foundry Works, Barakar (West Bengal), in accordance with Para. 15 of the certified standing orders. Sahib Singh refused to go to Barakar, and in consequence of this refusal he was chargesheeted for insubordination. After an inquiry as provided in Para. 6 of the standing orders he was suspended pending the permission of the industrial tribunal under Section 33 of the Act. In due course an application under Section 33 was made to the industrial tribunal, but this application was dismissed by order dated 30 April 1957 on the ground that the standing orders are not binding on Sahib Singh as he was employed by the company before these rules came into force and further that it is not the company's case that Sahib Singh knew of these standing orders. It is this order that is being challenged by this writ petition.

3. Now, I have carefully gone through the provisions of this Act and it appears to me that from the date of certification the standing orders are binding on all workmen of the company whether originally employed before or after these standing orders were certified, . Under this Act standing orders are framed by the management and are submitted to the certifying authority. That authority, after giving notice to the workmen and after hearing both the employers and the workmen, decides whether the standing orders submitted do or do not conform to the provisions of the Act. The decision of the certifying authority is open to appeal by any aggrieved person. On certification the standing orders come into operation in accordance with the provisions of Section 7 of the Act and become terms of employment between the management and workmen. The certifying officer is required to send copies of certified standing orders to the employers and to the trade unions or representatives of workmen and a copy ii pasted at the entrance of the industrial establishment. It is well settled that if the workmen are dissatisfied with the standing orders so certified, then they can raise a dispute which can be referred to the Industrial tribunal for settlement under the Industrial Disputes Act. It is common ground that when these proceedings under the Act were taken Sahib Singh was a "workman" and was serving the company in the present premises. In these circumstances, I do not see how the standing orders can be held to be not binding on Sahib Singh.

4. The learned Counsel for the respondent urged before me that the company did not state before the tribunal, nor did it indicate in this petition, that these standing orders were made in accordance with the provisions of the Act. There is no substance in this objection. On certification there is a presumption that the standing orders were certified after complying with the provisions of the Act. The respondent never urged that these standing orders were not certified in accordance with law. In these circumstances it was not necessary for the petitioning company to give in detail in the petition under Section 33 or in the present petition all the steps that were taken at the time when the standing orders were certified.

5. Then it is submitted on behalf of the respondent that in the exercise of my discretion I should not interfere with this order. The contention is that presumably Sahib Singh is being victimized because of the part that he took in the dispute which has been referred to the industrial tribunal. I do not propose to go into this matter at this stage particularly when there is no material placed before me relating to this matter. The only point that I am deciding by this judgment is that the authenticated standing orders are binding on Sahib Singh and for this reason I am unable to accede to the request of the respondent. The decision of the tribunal goes to the root of the validity of all authenticated standing orders so far as their applicability to workmen in employment before the date of authentication is concerned. This matter affects the basic principles underlying the Act and it is an error apparent on the face of it. This is a fit case in which I should exercise my discretion in favour of the company.

6. For these reasons I accept this petition and quash the order of the tribunal dated 30 April 1957. The tribunal will now proceed to decide the petition under Section 33 of the Industrial Disputes

Act in accordance with law on the basis that the authenticated standing orders of the company are binding on Sahib Singh. There will be no order as to costs of this petition.