PUNJAB AND HARYANA HIGH COURT

Om Parkash Sharma

Vs

Industiral Tribunal

(D.K. Mahajan, J.)

02.02.1962

ORDER

D.K. Mahajan, J.

1. This is a petition under Articles 226 and 227 of the Constitution by one Om Parkash who claims to be still an employee of the Tribune, Ambala.

2. A reference under the Industrial Disputes Act was pending between the workmen and the management before the industrial tribunal, Punjab, that being reference No. 13 of 1960. There was another reference pending. In both of these references awards were made on 4 October 1960 and 25 November 1960, and the awards became final on 4 November 1960 and 25 December I960, respectively. During the pendency of these references orders of dismissal of Om Parkash were passed on 12 July 1960. In accordance with the provisions of Section 33(2) of the Industrial Disputes Act the management sought approval of this order of dismissal from the tribunal. The tribunal refused to give its approval on 26 October 1960. Against this order the management moved this Court by a writ petition No. 1681 of 1960, which was decided by Grover, J., on 1 February 1961. The decision of Grover, J., is published in 1961 II L.L.J. 615 and the learned Judge allowed the petition and directed the tribunal to give a fresh decision on the petition under Section 33 of the Industrial Disputes Act and dispose of the same in accordance with law. When the matter went back to the tribunal, it refused to decide the petition on the ground that it had no jurisdiction to entertain the same because both the civil references had come to an end. However, the tribunal made the following observations in the concluding portion of its order: Similarly when the approval is refused that by itself does cot set aside the order of the employer or make it ineffective. Nevertheless the ban is removed and there is no contravention of Section 33 if the employer sticks to his order. In that case also the employee can challenge the validity of the order only by raising an industrial dispute and getting it referred. It is against the order of the tribunal refusing to decide the petition under Section 33 of the Act that the present petition has been preferred.

3. Two contentions have been raised by the learned Counsel for the petitioner, namely-

(1) that the tribunal is in error in holding that it had no jurisdiction to decide the petition, and (2) that if the tribunal's view is correct that it had no jurisdiction to decide the petition, it could not make the observations which I have already quoted in the earlier part of this order.

After hearing the learned Counsel for the parties I am of the view that there is considerable force in the first contention and in view of my decision on the first contention, it is not necessary to decide the second contention. For this purpose it will be necessary to refer to the provisions of Section 33(1) and (2) which are in these terms-

33. (1) During the pendency of any conciliation proceedings before a conciliation officer or a board or of any proceeding before a labour court or tribunal or national tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute;

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute,-

(a) after, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It will be noticed that a clear distinction is maintained between the disputes arising out of the reference and disputes which have nothing to do with the reference. The pendency of a reference merely puts an embargo on the powers of the management to dismiss or discharge its employees. Therefore, the seeking of approval under Section 33(2) for dismissal or discharge of an employee has nothing to do with a reference which is pending otherwise before the tribunal. By reference I mean an industrial dispute which the tribunal is called upon to decide. Sub-section (2) merely furnished a cause of action or in other words is a statutory requirement enjoined upon the management before it can dismiss an employee when some industrial dispute between its workmen and the management is pending though the dismissal may have nothing to do whatever with the reference or with that industrial dispute. Mr. Bhagirath Dass, learned Counsel for the management, drew attention to Sections 20 and 33A for the contention that the application under Section 33(2) would come to an end the moment the reference comes to an end in accordance with Section 20. I am unable to agree with this contention. It is no doubt true that an industrial

dispute which is referred to a tribunal comes to an end when the tribunal makes its award and that award becomes final. Once the award has become final, the tribunal becomes functus officio and has no jurisdiction to deal with any matter arising out of or connected with the reference but that will not put an end to an application under Section 33(2) because that application has no connexion whatever with the dispute nor does it arise opt of that dispute. It is totally an independent proceeding arising under Section 33(2). It will not die with the death of the reference or its culmination. Therefore, I am of the view that the tribunal is in error in holding that it has no jurisdiction to decide the petition.

4. There is another way of looking at the matter. At the time when the order directing the tribunal to give a fresh decision on the petition under Section 33(2) of the Act was passed by Grover, J., both the references had come to an end. It was not therefore open to the tribunal in face of that order to say that it had no jurisdiction. It was bound to carry out the order of this Court passed under Article 227 of the Constitution. In this view of the matter this petition is allowed and the case is sent back to the tribunal with the direction that it should determine the application of the management under Section 33(2). There will be no order as to costs.