

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 9253 of 1994
Date of decision : July 29, 2015

**Punjab Dairy Development Corporation through Managing
Director and others**

..... Petitioner

Versus

**Presiding Officer, Industrial Tribunal, Punjab, Chandigarh and
another**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D. S. Patwalia, Senior Advocate with
Mr. Bikramjit S. Patwalia, Advocate
for the petitioner.

Ms. Shallie Mahajan, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner-Management has knocked the door of this Court challenging the award dated 20.12.1993 (Annexure P-1) on the ground that the award passed by the Labour is not based on the appreciation of evidence, much less cogent evidence. None of the workmen who had co-jointly raised the dispute has worked.

Learned Senior counsel for the petitioners submits

that consolidated claim of the workmen was not maintainable, in view of the embargo of Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), therefore, the award of the Labour Court is liable to be set aside.

Ms. Shallie Mahajan, learned counsel appearing on behalf of respondent No.2 submits that there is no illegality and perversity in the award of the Labour Court. The award of the Labour Court is fair, legal and justified and the objection qua maintainability of the petition jointly by the workmen had not been taken before the Labour Court, much less in the present petition.

It is now settled law that legal objection can be taken at any stage of the proceedings. The language of Section 2-A of the Act is clear and leaves no manner of doubt that claim of the workmen in respect of discharge, retrenchment and termination is maintainable before the Labour Court, that too at the instance of an individual workman and not by workmen. Section 2-A further provides, notwithstanding anything contained in Section 10, no such workman as is specified in sub Section (1) may make an application direct to the Labour Court or Tribunal for adjudication of the dispute.

In order to appreciate the aforementioned contention/submission, it would be apt to extract herein below Section 2-A of the Act:-

“2-A Dismissal, etc. of an individual workman to be deemed to be an industrial dispute- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his

employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

2. Notwithstanding anything contained in section 10, any such workman as is specified in sub section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as it if were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such jurisdiction as they apply in relation to an industrial dispute referred to it by the appropriate Government.

3. The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

On perusal of the provisions of Section 2-A of the Act as well as sub section (1) thereof , on which the emphasis has been laid, it is clear that the parliament in its wisdom meant only an application on behalf of an individual workman and not of a collective claim.

Mr. D. S. Patwalia, learned Senior counsel appearing on

behalf of the petitioner-Management, in support of his submission, relied upon the judgment of **Andhra Pradesh High Court in Bayer Bio Science Pvt. Ltd. vs. the Presiding Officer, Labour Court, Hyderabad and another 2012 LAB. I.C.176** to contend that the collective claim petition filed by the workmen has been held to be not maintainable. Paragraph 24 of the aforementioned judgment is extracted herein below:-

“24. However, the third contention raised the petitioner Company as to the Labour Court not having jurisdiction under Section 2-A of the Act, 1947, owing to the nature of the dispute sought to be raised by the petitioners in the I.Ds merits consideration. The thrust of judicial thought as voiced in the decision referred to supra, clearly indicate that Section 2-A has been put in place to redress the grievance of an individual workman which constitutes an individual dispute relating to the dismissal, discharge, retrenchment or termination from service of such individual workman. A collective dispute affecting a large body of workmen cannot be equated to an individual dispute redressable under section 2-A of the Act of 1947. Such a dispute would necessarily have to be addressed collectively by use of the machinery provided in the Act of 1947, which requires a separate process altogether. The same cannot be brought before the Labour Court by way of a petition under Section 2A (2) of the Act, 1947. In the present case, the allegation of the

petitioners in the I.Ds is that more than 150 employees were subjected to coercion and force to agree to the VRS. The further allegation is that the terms and conditions of the VRS were not lawful and proper. Merely because each of the petitioners in the I.Ds were relieved from the service on the basis of said VRS, it cannot be construed to be an individual dispute pertaining to them independently. They all stood on the same footing. Relevant to note, only a select few of the beneficiaries of the said scheme are before the Court but the adjudication resulting from their claim would affect all of them. The dispute, being not individualized, necessarily had to be addressed collectively. Merely because impact of this collective dispute is felt individually by each of the petitioners in the IDs, it cannot be equated to an individual dispute pertaining to an individual workman so as to bring it within the said provision. This aspect ought to have been gone into by the Labour Court at the initial stage before issuing notice upon the I.Ds to the petitioner Company, as it goes to the very root of its jurisdiction under Section 2A (2) of the Act of 1947. The failure on the part of the Labour Court in doing so clearly demonstrates that Labour Court was on the verge of usurping and exercising jurisdiction, which it did not have under that provision.”

Ms. Shallie Mahajan, learned counsel appearing on

behalf of the respondent No.2-workman contends that no doubt the provisions of Section 2-A of the Act deal with the claim of individual workman but there is no embargo in the statute for the employee not to file petition on behalf of more than one workman.

I have heard learned counsel for the parties and appraised the paper book and as well as case law cited by the learned counsel for the petitioner-Management at bar and am of the view that the plea taken by the Management has substance, much less, force and is duly supported by a ratio decidendi culled out by **Andhra Pradesh High Court in Bayer Bio Science Pvt. Ltd.'s case (supra)**. The reading of Section 2-A of the Act is clear and unambiguous. There is no doubt that parliament in its wisdom while incorporating the provisions meant with claim of individual workman by using expression 'individual workman' in Section 2-A of the Act and also by adding non obstante clause in sub-section 2 of the Act with pre-face or 'such workman' as specified above.

Keeping in view the aforementioned legal position of law, this Court is of the view that collective claim petition filed directly by the workmen before the Labour Court is not maintainable. The workmen would be within their rights to claims lodge/file in their individual capacity, if any cause of action survives.

In view of what has been observed above, the writ petition is allowed. The Labour Court has exercised jurisdiction by entertaining the collective claim petitions on behalf of the workmen is ordered to be quashed/set aside. However, the aforementioned observations of this Court will not dis-entitle the workmen to file their

individual claims, if any, for redressal of their grievances, in accordance with law.

The writ petition is allowed, accordingly.

(AMIT RAWAL)
JUDGE

July 29 , 2015
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