

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 17.11.2015

CWP No.5000 of 2012

Kulwinder Singh ... Petitioner

Versus

Presiding Officer, Labour Court, Bhatinda & ors. ... Respondents

CWP No.11817 of 2013

Kulwinder Singh & ors. ... Petitioners

Versus

Presiding Officer, Labour Court, Bhatinda & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Inderjit Sharma, Advocate,
for the petitioner.

Mr. Deepak Kumar, Advocate,
for Mr. Vikas Chatrath, Advocate,
for respondents No. 2 & 3.

Mr. SC Arora, Advocate,
for respondents No.4, 7, 9 & 10.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of writ petitions bearing No.5000 of 2012 and 11817 of 2013 as common questions of law and fact are involved in them which can conveniently be decided by a common order.

The facts are taken from CWP No.5000 of 2012 for convenience.

2. This petition has been filed under Articles 226 & 227 of the

Constitution of India praying for setting aside the impugned award passed by the Labour Court, Bhatinda in Reference No. 236 of 1997. The petitioner raised a dispute with respect to his termination while serving with the Punjab State Electricity Board, o/o Executive Engineer, Pole Pilot Factory, Sadiq Road, Muktsar (Vakil Chand, Contractor). In his demand notice dated April 15, 1998, the workman is non-committal as to who is the employer, whether direct or through contractor. The dispute was referred to the Labour Court, Bhatinda by the appropriate Government. There were 9 workmen disputing with the management. The validity of the termination order was put to trial. The Labour court by its award dated January 11, 2002 returned a finding that the relationship of employer and employee did not exist between the workmen and the PSEB. The workmen were employees of the contractor. They had worked for less than a week under respondent 3 i.e. Vakil Chand and as such, the Board was not required to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court noted that other contractors have not been impleaded as a party in the *lis*. Accordingly, the Labour Court took the view that the termination orders were legal and valid. The reference was turned down.

3. Aggrieved by the award, the petitioner has approached this Court through CWP No.6975 of 2002, which petition was disposed of by the Division Bench of this Court on July 10, 2002 by passing the following order:-

“Main case.

We have heard the learned counsel for the parties. The learned counsel for the petitioner

wishes to withdraw this petition with liberty to approach the learned Labour Court concerned as necessary parties were not impleaded to the award before the trial Court and without leave of the Court have been added as respondent Nos.4 to 10. The learned counsel for the petitioner also contends that certain evidence which ought to have been produced before the Labour Court has not produced, though pleadings to that effect has been raised in the petition.

CWP No.6956 of 2002

Without commenting upon the merits of the main petition, we dismiss this petition as withdrawn to approach the Labour Court. The Labour Court shall deal with the application in accordance with law expeditiously.”

4. The net result of the order was that the petition was dismissed as withdrawn with liberty to approach the Labour Court on account of necessary parties not having been impleaded to the litigation resulting in the award of the Labour Court. They have been arrayed as respondents 4 to 10 without leave of the Court in the said writ petition. The Labour Court was enjoined only to deal with the application, which was in the nature of Order 1 Rule 10 CPC, in accordance with law and to do so expeditiously. The Labour Court dismissed the application by assigning the following reasons in para.10 of the order:-

“10. Hon'ble High Court in its order dt.24.7.2002 has not set-aside the award dt. 11.1.2002. I have very carefully gone through the Industrial Disputes Act. There is no

provision of any law in the Industrial Disputes Act to review the award passed by this Court in a contested reference. The only remedy available to the workman was to file civil writ petition before the Hon'ble High Court, which was dismissed as withdrawn by the applicant/workman. Now the applicant is left with no right to seek the relief of reviewing the award passed by this Court. Despite taking various adjournments by learned representative of the applicant to cite any authority or any provision of law which vest power in the labour court to review its own award but the learned representative of the workman has filed to cite any authority or any provision of law. So, in view of my discussion held above in detail, I find no merits in the present review petition and the same is dismissed.”

5. The application has been dismissed. The present is not a civil suit where resort can be had to Order 1 Rule 10 CPC to expand the case to include directions to implead newly added defendants. The present is a labour matter which postulates that a dispute has been raised with the employer/Board or with the contractor before it matures as an industrial dispute capable of being referred by the appropriate Government to the area labour court for adjudication under the provisions of Section 10(1) (c) of the Act. It is trite law that the Labour Court cannot travel beyond the reference made by the appropriate Government on the existing material placed before it and to expand the case beyond the proposition formulated in the reference order. If the journey expands then the dispute has to be raised again and would have to go back to the conciliation

proceedings and on failure the appropriate Government would be in a position to vary, modify or expand the dispute, which methodology has not been adopted and therefore, the Labour Court was within its jurisdiction to have dismissed the application. The Labour Court is correct when it holds that it has no power to review the award passed by the predecessor Labour Court unless there is a clear direction from the High Court. In the present case, the Division Bench of this Court did not order respondents 4 to 10 to be impleaded as parties and therefore, the Labour Court committed no error in rejecting the application. If the petitioners are still aggrieved, they would have to raise fresh disputes in the expanded arena of parties as presented before the Division Bench of this Court and to seek a fresh reference from the appropriate government for adjudication of the broadened dispute *vis a vis* contractors and to apply the tests of contractual employment and lifting of veil laid down in **Steel Authority of India v. Union of India**, (2006) 12 SCC 233.

6. For the forgoing reasons, there is no merit in both the petitions, which are ordered to be dismissed, however, with the liberty aforesaid.

(RAJIV NARAIN RAINA)
JUDGE

17.11.2015
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