

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17883 of 1996

Date of Decision: 21.03.2017

Smt. Mithlesh Yadav

... Petitioner

Versus

State of Haryana and another

... Respondents

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

Present: Mr. Amrit Paul, Advocate,
for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. D.S. Dadwal, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

When this matter was posted to the Lok Adalat the letters sent to the respondent No.2-Management was returned back with the report “addressee has left the premises”. Therefore, matter was returned to this Court for a decision on merits.

Learned counsel for respondent No.2 has produced a sealed letter which bears the postal remarks which is mostly illegible “...chord gaya”. Accordingly, the management cannot be reached in the ordinary way either by the process of the Court or through the postal department. I have no option except to proceed against the management ex parte even in the face of its counsel who is unable to contact his client.

Would this mean that the Court has paralyzed in entering the dispute in a case where the appropriate Government declines reference of an

industrial dispute by accepting the version of the Conciliation Officer. The Conciliation Officer was required to attempt settlement but travelled beyond its powers to include in the failure report his opinion that the services of the petitioner-workman were “properly terminated with effect from 28-5-95 only according to the service conditions given in the appointment letter. Her demand letter does not lie. Therefore it may be rejected.” On appeal, the petitioner was informed vide letter dated February 15, 1996 that her case was considered by the Government and was not found fit for reference for adjudication because it has been revealed through inquiry that she had been employed on probation for one year and during this period her services have been terminated according to the terms and conditions in the appointment letter.

Against this order, the petitioner approached this Court in 1996 and the petition was admitted by the Division Bench on July 14, 1997 for regular hearing. This is how the matter has come up today for final hearing amongst batches of five old cases taken up in the urgent list with a note in the cause list that an unnecessary adjournment would not be granted.

Having heard Mr. Paul and Mr. Dadwal [who pleads no instructions] this Court is of the opinion that the impugned order is not legally sustainable and deserves to be set aside. It is well settled proposition of law that an industrial reference cannot be refused by permitting the officers in the Labour Department of the appropriate Government to don the robes of a Court of Law. The appropriate government performs only an administrative act while making a reference and it cannot decide the dispute.

It is for the industrial adjudicator to go into the terms and

conditions of the appointment and to see what effect they would have on termination even during probation. The workman may yet plead violation of the law under the Industrial Disputes Act, 1947 in his favour and prove it by evidence.

Moreover, the Labour Commissioner possesses no jurisdiction to interpret documents on which a claim is based for reinstatement and consequential benefits. The poor workman even filed an appeal to the Joint Secretary-cum-Labour Commissioner, Haryana to re-visit the order and to make reference which was another opportunity to the appropriate government to do justice which has now to be corrected on judicial review of administrative action.

After all, it was the assertion of the workman that she was never given a letter of appointment and as such in the absence of a letter in writing the alleged plea of the management that the workman was on probation was not available to it, and thereby hangs the tale. Instead of accepting the appeal the Labour Commissioner refused to interfere by passing the second impugned order dated October 30, 1996 (Annex P-7) stating that the case has been examined and there was no new fact to bring about any change in the decision already taken by the Government.

Both these impugned orders are held to be illegal, arbitrary and contrary to the fundamental principles of industrial adjudication and cannot be sustained. Accordingly, they are set aside. The appropriate Government is directed to re-consider its decision and make a reference to the appropriate Labour Court for adjudication. In case of reference, it will be the duty of the Labour Court to search out the management even if it requires police help

which it may elicit under the authority of this order. The workman would in addition have the liberty of directly approaching the labour court exercising territorial jurisdiction over the subject matter directly under the amended provisions of Section 2A (2) of the Act introduced w.e.f. 15.9.2010 and the labour Court will not reject the dispute by applying Sub Section (3) of Section 2A of the Act by virtue of Section 14 of the Limitation Act, 1963, the petition having remained pending for twenty one years in this Court.

The writ petition is allowed as prayed.

(RAJIV NARAIN RAINA)
JUDGE

21.03.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*