

In the High Court of Punjab and Haryana at Chandigarh

Reserved on: November 28, 2017

Date of Decision: December 12, 2017

1) *C.W.P. No. 10832 of 2014 (O&M)*

Lal Chand *Petitioner*

Versus

M/s Maruti Suzuki India Ltd. and another *Respondents*

2) *C.W.P. No. 15980 of 2014 (O&M)*

Lal Chand ... *Petitioner*

Versus

M/s Maruti Suzuki India Ltd. and another *Respondents*

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ashwani Bakshi, Advocate,
for the petitioner.

Mr. B.S. Patwalia and Mr. Gaurav Rana, Advocates,
for respondent No.1.

P.B. Bajanthri, J.

1. By this common order, both the aforementioned civil writ petitions i.e. C.W.P. Nos. 10832 and 15980 of 2014 are being decided together.

2. In CWP No. 10832 of 2014, petitioner has challenged the validity of award passed by the Labour Court dated 01.04.2014 in reference No. 739 of 2003 under 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act") (Annexure P/24),

3. In CWP No. 15980 of 2014, petitioner has challenged the

order dated 01.04.2014 passed in application No. 01 of 2003 under Section 33-2(b) of ID Act (Annexure P/24).

4. Petitioner was appointed as an Assistant (Store) on 24.11.1984. He has left the job in order to accept new appointment as a Senior Executive Assistant (Admn. & Purchase) with Educational Consultant of India (A Government of India Enterprises), Ministry of HRD. Once again, petitioner joined the respondent-Maruti Udyog Ltd., on 03.02.1992 as an Assistant. During the period from 1994 to 2000, he had earned promotions to L-5 to L-8. On 15.02.2001 respondent-management issued an order effecting transfer and posting of 63 employees including the petitioner. Petitioner was working in the Spare Parts Accessory Department. He has been shifted to Assembly Department as a Technician L-8. Petitioner is stated to have apprised his superior that he was appointed on the administrative side as an Assistant, whereas he has been shifted from administrative to technical side. When things stood, thus, management shifted/transferred petitioner to Regional Office, Guwahati on 15.10.2001. He was not paid wages for the intervening period. Respondent-management initiated disciplinary action and terminated petitioner's services on 26.08.2003.

5. On 17.02.2001 Employees' Union passed a resolution to raise an industrial dispute with reference to orders of transfer issued to various employees including petitioner. Demand notice was issued by the Union on 19.02.2001 in which petitioner's name is reflected. Failure report was submitted on 22.08.2001. Petitioner filed writ petition seeking directions to the Government to pass appropriate order on the demand notice. CWP

No. 16938 of 2002 filed by the petitioner was disposed of on 22.10.2002 directing the Government / competent authority to take a decision on the demand notice. Pursuant to the same, Government / competent authority declined petitioner's demand of reference on 01.01.2003. Feeling aggrieved by the decision of the competent authority, petitioner filed writ petition and it was pending consideration. During pendency of CWP No. 1393 of 2003, competent authority referred dispute to the Industrial Tribunal on 16.07.2003. Thus, CWP No. 1393 of 2003 was disposed of as it has become infructuous. The Labour Court framed the following issues:-

- “1. Whether the transfer of workman/petitioner is not justified? OPW*
- 2. Whether the reference is without jurisdiction in view of preliminary objection? OPM*
- 3. Relief.”*

The Labour Court passed award against the petitioner that dispute is not maintainable. Hence present petition.

6. Learned counsel for the petitioner submitted that Labour Court has erred in holding that dispute is not maintainable on the score that Employees' Union has not espoused the cause. Industrial dispute between the workman and management would be entertained only in respect of dismissal, discharge, termination or retrenchment, whereas the issue is relating to transfer. Learned counsel for the petitioner further submitted that in respect of transfer of employees including the petitioner, Employees' Union passed a resolution on 17.02.2001. Demand notice was issued on 19.02.2001. In both the documents, name of the petitioner is reflected. It was further submitted that statement of the respondent before

the Conciliation Officer it is evident that Employees' Union espoused the issue of transfer. It was also submitted that along with the application for summoning records copy of resolution passed by the Employees' Union was made available to the Labour Court. Whereas the Labour Court proceeded to hold that workman-petitioner has not placed copy of any resolution adopted by the Employees' Union and as witness before the Court and very bald averment has been made by the workman in his affidavit. Sufficient material has not placed to prove that individual dispute was supported or espoused by the Employees' Union or other workman in any manner. The finding of the Labour Court is contrary to factual aspects as well as records like application for summoning records read with the resolution passed by the Employees' Union. In support of the petitioner's contention, learned counsel relied on the reported decision, namely, ***Workmen of Indian Express Newspaper Private Ltd. vs. The Management of Indian Express Newspaper Private Ltd, AIR 1970 Supreme Court 737 (Para 6).***

7. Learned counsel for respondent no.1 while resisting the claim of the petitioner submitted that both the aforementioned writ petitions, namely, CWP Nos. 10832 and 15980 of 2014 have become infructuous in view of the fact that petitioner had been dismissed from service on 26.08.2003 in an *ex-parte* enquiry. Petitioner has not challenged the validity of the dismissal order. It was further submitted that demand notice before the Conciliation Officer is in respect of all the employees. In the claim statement (Annexure P/16), it was contended by the petitioner that whether petitioner was junior most person in the industrial establishment

to be retrenched with an option to accept the job of technician and whether on his refusal to do the job of technician transfer of any services to Guwahati to be dismissed are legal is stated which is not relevant for the purpose of claim of the petitioner. It was further submitted that reference made by the competent authority is individual. When the resolution and demand notice is by the Employees' Union, therefore individual reference and its maintainability before the Labour Court is not supported by any provision of law for the reasons that individual grievance under Section 2-A would be only to the extent if a workman is dismissed or discharged or terminated or retrenched, therefore, Labour Court has rightly rejected the reference on the ground of maintainability. Hence, no interference is called for. In support of the respondent-management's contention, learned counsel relied on the following decisions:-

- i) Bharat Heavy Electricals Ltd. vs. Anil and others, (2007) 1 SCC (L&S) 432 [Paras 17 & 18];*
- ii) Rajasthan State Road Transport Corporation and another vs. Krishna Kant and others, (1995) 5 SCC 75 [Para 20];*
- iii) The Bombay Union of Journalists and others vs. The 'Hindu', Bombay and another, AIR 1963 SC 318 [Paras 7, 8 and 15].*

8. Respondent-management proceeded to pass order of dismissal / termination on 26.08.2003 and further action was taken by making an application under Section 33-2(b) of ID Act and it was numbered as Application No. 01 of 2003. It was decided on 01.04.2014 that such application is not maintainable on the score that in respect of transfer matter, reference has been decided that Labour Court has no jurisdiction.

9. Heard learned counsel for the parties.

10. Question for consideration in the present petitions is whether reference No. 739 of 2003 under Section 10(1)(c) of the ID Act is in order or not, further finding of the Labour Court with reference is not maintainable before the Labour Court. Similarly, whether application under Section 33-2(b) is maintainable before the Labour Court or not?

11. Before advertng to the contentions of the partes, it is appropriate to peruse statement of objects and reasons of the ID Act. Supreme Court in the case of **Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. and another**, reported in (1999) 6 SCC 82, held as under:-

“Object of the Act – The Industrial Disputes Act was brought on the statute-book with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour.”

12. Hon'ble Supreme Court in the case of **S.K. Verma vs. Mahesh Chandra and another**, reported in (1983) 4 SCC 214, dealt with preamble and Section 2(j), (k) and (s) of ID Act, held that liberal and pragmatic

approach is required. Para 5 reads as under:-

“5. It is trite to say that Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of 'industry', 'workman,' 'industrial dispute', etc. so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all. In Workmen vs. Indian Standards Institution, (1975) 2 SCC 847, this Court had occasion to point out:

"..... It is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discontented and, therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular concern is an 'industry' the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation

and give full meaning and effect to it in the achievement of its avowed social objective.”

Similarly, scope of Section 2(k) dealt by the Supreme Court in the case of ***Christian Medical College Hospital Employees' Union vs. Christian Medical College Vellore Association and others***, reported in (1987) 4 SCC 691. Para No.12 reads as under:-

“12. Section 2(k) of the Act defines an 'industrial dispute' as any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The Act provides for the constitution of works committees in industrial establishments employing 100 workmen or more and they are charged with the duty of removing causes of friction between the employer and workmen in the day-to-day working of the establishment and promoting measures for securing amity and good relations between them. Industrial peace is most enduring where it is founded on voluntary settlement, and the works committees are entrusted with the duty of providing a machinery for the settlement of disputes. Section 12 of the Act provides for the appointment of Conciliation officers in order to negotiate between the managements and their workmen and to bring about settlement if possible. If the conciliation proceedings fail, the Conciliation officer has to make a report to the appropriate Government accordingly. A reference to an Industrial Tribunal of a dispute under Section 10 of the Act is made where both parties to an industrial dispute apply for such reference or where the appropriate

Government considers it expedient so to do. An award of a Tribunal may be in operation for a period of one year subject to the provisions of Section 19 of the Act. The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock- out, which must remain inviolate, except where considerations of public interest override such rights. The Industrial Tribunals or Labour Courts constituted under the Act are presided over by persons having judicial experience such as a person who is or has been a Judge of the High Court or who has been for a period not less than three years a District Judge or an Additional District Judge or a person who has not less than five years' service as Presiding officer of a Labour Court constituted under any law for the time being in force or who holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than ten years. The Presiding officer of a Labour Court should also possess substantially the same qualifications and they are set out in Section 7 of the Act. Section 9-A of the Act, which is one of the sections the applicability of which to a minority educational institution is questioned, provides that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall effect such change without

giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or within twenty-one days of giving such notice, except in certain cases which are mentioned in the proviso thereto. This section was introduced since there was a persistent demand that notice should be given whenever it was proposed to make any change in the conditions of service of the workmen. Section 11-A of the Act confers powers on the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. It provides that where an industrial dispute relating to the discharge or dismissal of a workmen has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudicational proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. On the basis of the materials on record, the Tribunal is empowered to pass an appropriate order under Section 11-A of the Act. Section 33 of the Act provides that the conditions of service etc. Of the employees should remain unchanged under certain circumstances during pendency of proceedings before an arbitrator or 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. It further provides

that no employer shall 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 for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceedings is pending. If the conditions of service relate to any matter not connected with the dispute or if the misconduct of the workman is not connected with the dispute the management should seek the approval of the authority concerned and comply with the other conditions mentioned in the proviso to Section 33(2) of the Act. Section 33(3) of the Act provides that in the case of protected workmen the express permission of the authority concerned should be obtained before any such action is taken. Section 33-A of the Act provides for the making of an application before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal for appropriate relief if Section 33 of the Act is contravened. Thus it is seen that the Act is one which is enacted as a social security measure in order to ensure welfare of labour and it falls within one or the other of Entry 22-Trade Unions; industrial and labour disputes, Entry 23 - social security and social insurance; employment and unemployment and Entry 24-welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits in the List III of the Seventh Schedule to the Constitution of India. The Act generally applies to all industries irrespective of

the religion or caste to which the parties belong. It applies to industries owned by the Central and the State Governments too. Any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution of India and an appeal to this Court under Article 136 of the Constitution of India. The Labour Court, the Industrial Tribunal, the High Court and this Court while dealing with matters arising out of the Act have to deal with them objectively. The smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workmen in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as 'hiring and firing', termination or retrenchment of the service of a workman on irrational grounds will have to be checked. The Act makes provisions in respect of these matters. The Act being a general law for prevention and settlement of industrial disputes cannot be construed as a law which directly interferes with the right of administration of a minority educational institution guaranteed under Article 30(1) of the Constitution of India. The law is not enacted with the object of interfering with any such right. It clearly falls within the observation of Mathew, J. in St. Xavier's College, case (supra) that "regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of

activity, the similar impact on the right seems clearly insufficient to constitute an abridgement."

In the case of ***Rajasthan State Road Transport Corporation and another vs. Krishna Kant and others***, reported in **(1995) 5 SCC 75**, Supreme Court in para no. 35 held as under:-

"35. We may now summarise the principles flowing from the above discussion:

(1) xxx xxx xxx

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) xxx xxx xxx

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a

workman to approach the Labour Court/Industrial Tribunal directly - i.e., without the requirement of a reference by the government - in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act .

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Order) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

In the case of ***Rajasthan State Road Transport Corporation and others vs. Zakir Hussain***, reported in (2005) 7 SCC 447, Supreme Court in para no. 30 reads as under:-

The object of the Industrial Disputes Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes, which means adjudication of such disputes also. The act envisages collective bargaining, contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the Indian law of contract. The expression "industrial dispute" is defined in Section 2(k) to say that:

"2 (k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

Having regard to the aforesaid decisions for the purpose of deciding dispute between the employer and employee, there cannot be a rigid approach in respect of entertaining their grievance by the Labour Court.

13. In the present case, Labour Court declined to entertain reference is of the petitioner on the score that his grievance is required to be espoused by the Employees' Union and not in an individual capacity. It was further held that petitioner failed to produce any document that his grievance was espoused by the Employees' Union. Perusal of the record, it is evident that Employees' Union passed a resolution on 17.02.2001 in

respect of transfer of its members so also demand notice was issued on 19.02.2001. In both the documents, petitioner's name is reflected. Therefore, Employees' Union espoused the cause of the petitioner in respect of transfer. Even respondent-management have taken note to the extent that Employees' Union has espoused the cause of the petitioner, thus, Labour Court erred in giving finding that in respect of petitioner's transfer, Employees' Union has not espoused the cause. Hence, there is a manifest error in deciding the Reference No. 739 of 2003 by the Labour Court.

14. The respondent's contention that both the aforesaid writ petitions have become infructuous on the fact that petitioner has been dismissed from service which has attained finality on 26.08.2003, even to this day, petitioner has not challenged the validity of dismissal order. It was further contended that demand notice before the Conciliation Officer is in respect of all the employees and not petitioner alone and in the claim statement, petitioner has taken the contention that junior most person in the industrial establishment to be retrenched with an option to accept the job of Technician which is not relevant for the purpose of claim of the petitioner. It was also contended that resolution and demand notice is by the Employees' Union, therefore, individual reference and its maintainability before the Labour Court is not supported by any provision of law in view of Section 2-A which is relating to dismissal/discharge/termination/retrenchment. In support of these contentions, learned counsel for respondent no.1 relied on cited (i) to (iii) decisions (*supra*). Writ petitions have not become infructuous merely in

not challenging the order of dismissal. Issue in the present petition is relating to transfer of the petitioner to Guwahati against technical post when the petitioner was holding a non-technical post. Further issue is relating to approval of dismissal order by the Labour Court under Section 33-2(b) of ID Act. Therefore, writ petitions would survive. Contention of the respondent that Employees' Union has espoused the cause of the petitioner and others and individual reference is not maintainable, is not tenable in view of scope and object of ID Act. No doubt, Section 2-A is relating to dismissal/discharge/termination/retranchment at the same time reading of Section 2(k) relating to "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the contentions of labour, of any person. In the present case, issue is relating to transfer of the petitioner to Guwahati that to against technical post for which petitioner is not eligible to hold. In order to harass the petitioner such transfer has been stated to have been passed so as to see that petitioner on his own leave the job. Respondent-Management has failed to challenge the Reference No. 739 of 2003. The Labour Court has failed to appreciate definition of "industrial dispute" under Section 2(k) read with object and preamble of the ID Act. Hence, award of the Labour Court dated 01.04.2014 passed in Reference No. 739 of 2003 is set aside and the matter is remanded to the Labour Court for fresh adjudication.

15. In view of award dated 01.04.2014 passed in Reference No. 739 of 2003, Labour Court proceeded to dismiss the application filed

under Section 33-2(b) of ID Act respondent-management seeking permission for removal from service, contrary to Section 33-2(b), is arbitrary and illegal. Consequently, order dated 01.04.2014 passed in Application No. 01 of 2003 is also set aside. Matters are remanded to the Labour Court to decide reference No. 739 of 2003 under Section 10(1)(c) of ID Act and application No. 01 of 2003 under Section 33-2(b) of ID Act presented by the respondent-management afresh. Parties are hereby directed to appear before the Labour Court on 15.01.2018. The Labour Court is requested to decide the Reference No. 739 of 2003 and Application No. 01 of 2003 at the earliest not beyond six months from the date of receipt of copy of this order for the reasons that petitioner is out of service from October 2001.

16. Both the afore-mentioned writ petitions stand allowed.

December 12, 2017

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**[P.B. Bajanthri]
Judge**

Whether speaking / reasoned : Yes

Whether reportable : No