

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 01.02.2017****CWP No.1695 of 2017**

DCM Textiles, Hisar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Suvir Kumar, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

This petition has been filed under Articles 226 & 227 of the Constitution challenging an order of reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (Annex P-9) made by the appropriate Government to the Labour Court, Hisar. The dispute was raised by demand against non-employment.

The order of reference of the dispute cannot, to my mind, be castigated as one without jurisdiction or that there has arisen no industrial dispute whatsoever between the parties. It is explained that the respondent worker was a Doffer in the Textile Mill run by the petitioner – company. She suffered an injury and was forced to remain absent from duty. Thereafter, she made request for reinstatement in any capacity where she could work consistent with her medical condition. The petitioner company pleads a case of abandonment of service insisting there was no retrenchment. Learned counsel for the petitioner submits that the Management has always been willing to take back the services of the workman provided she produces a medical certificate certifying that she is medically fit to do the job she was

employed for. If she provides a medical certificate of fitness they would consider her case.

Without expressing any opinion on this issue so as not to prejudice any of the parties in the trial, I would not find any cogent reason to intervene in this case at this stage to quash the reference order, when the same is neither illegal nor arbitrary only because the dispute as to termination has been referred for adjudication. The petitioner in rebuttal can always plead and prove there was no termination brought about by the management. Even to enter upon the divergent stands of the parties, adjudication on the merits of the case on merits is necessary on the evidence which may be adduced by the parties during the proceedings before the labour court, pro and contra. It is well settled that disengagements can either be oral or in writing and caused in many varied ways. An order of reference is administrative in character and not quasi judicial in nature, See, State of Madras Vs. C.P.Sarathy & Anr., AIR 1953 SC 53. No reasons need be recorded in writing in an order of reference made in the subjective satisfaction of the appropriate government on the material available with it forms opinion that the dispute should be referred for adjudication. The reference order does not decide the dispute. It leaves it open to determination by the designated forum. No *lis* is involved at the stage when order is made referring the dispute to the labour court for resolution. The appropriate government does not have to collect evidence before it issues an order of reference of an industrial dispute as that would amount to usurpation of jurisdiction under Section 10 (1) (c). It is well settled that a writ petition lies only when the rights of some party have been adversely affected. A mere reference under Section 10 (1) of the Act does not affect any one's rights

and therefore a writ petition should ordinarily not be entertained against a mere reference order and as such the petition is premature.

However, this is not to say that a reference order is not open to challenge in proceedings under Article 226 if it does not reflect the real dispute between the parties. Extraordinary situations leading to irreversible injustice fall in the exceptions to non-interference.

Nevertheless, termination and abandonment are two sides of one coin which can only be resolved on evidence [since both lead to termination, one real, the other by presumption or inference gathered from the attending circumstances]. One is in challenge-mode, the other in refutation; the gap may be slim or wide and that depends on facts proved by evidence. Abandonment can well be deemed termination as both sever the thread of employment and snap the employer-employee relationship. It depends on who is using what, to obtain or defeat relief of reinstatement etc. This is unlike, in a given case, a dispute relating to “lock-out” or “closure” being the opposing stands of workmen and employer where government cannot presume one for the other and reference on one side may be faulted justifying quashing of reference with a direction to the government to reconsider its decision and word the reference order appropriately to bring out the real dispute. One-sidedness obstructs employer to prove “lock-out” as it would not be permitted to travel beyond the terms of reference. See, Full Bench of the Delhi High Court in Indian Tourism Development Corporation Vs. Delhi Admn., 1989 LIC 1309.

Consequently, I find no valid reason to justify quashing of the impugned reference order. Thus, the petition is dismissed. However, while dismissing this petition, it may be recorded that this order will have no bearing or affect on the pending proceedings before the Labour Court. Nor

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would the dismissal influence the forum in any manner as this Court has not expressed any opinion on the merits of the dispute which work rests on the labour court where the dispute stands registered for determination. The labour court is free to express its views independently as to whether there has taken place termination or abandonment of service.

01.02.2017

Vimal

**[RAJIV NARAIN RAINA]
JUDGE***Whether speaking/reasoned:* *Yes**Whether Reportable:* *Yes*