

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

DECIDED ON : 06.12.2019

1

CWP No. 10371 of 2017

M/s Escorts Limited

...Petitioner

versus

State of Haryana and another

...Respondents

2

CWP No. 10372 of 2017

M/s Escorts Limited

...Petitioner

versus

State of Haryana and another

...Respondents

3

CWP No. 10373 of 2017

M/s Escorts Limited

...Petitioner

versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Manu K. Bhandari, Advocate, for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Lalit Rishi, Advocate
for respondent No.2 in CWP No.10373 of 2017.

GIRISH AGNIHOTRI, J. (ORAL)

This common order shall dispose of aforesaid three writ petitions since identical questions of law and facts are involved in the same. For the sake of convenience the facts are being taken from CWP No. 10371 of 2017.

Present petition has been filed with the prayer to quash the

order dated 27.02.2017 (Annexure P-6) passed by respondent No.1 under Section 10(1) of the Industrial Disputes Act, 1947.

When this case came up for hearing before this Court on 15.05.2017, following order was passed:-

'The petitioner – company has challenged the impugned reference order dated 27.02.2017 on the ground that the disputes may have arisen between the management and its workmen, but not between the Chairman; the Managing Director; the Chief Executive Officer; Mr. Ishan Mehta, Vice President, Corporate HR and Mr. Praveen Kumar Sinha, AVP – Corporate HR, to wrongly suggest that the designated authorities and two of its officers are each disputing with the workmen. This misdescription Mr. Joshi says would inevitably lead to serious damage not only to M/s Escorts Limited, but to the workmen since M/s Escorts Limited is not described as a party, but only its Chairman; Managing Director; The Chief Executive Officer and two of the officers of the company. The reference should have been that disputes exist between M/s Escorts Limited and its disputing employees. If the reference is allowed to proceed, it will result in mistrial and bring no relief or reconciliation between the parties. Mr. Joshi submits that the flaw is fundamental and deserves to be corrected in writ proceedings so that real parties go to trial.

It is the contention of Mr. Joshi that from a reading of the reference order, it appears that in the opinion of the Government of Haryana, the dispute exists between five persons, which do not include the name of the company. It would make it virtually impossible to file pleadings and lead evidence, as the misdescription is fatal.

It is rather strange on the part of the appropriate Government to have arrayed the Chairman and the Managing Director with the prefix “Hon’ble” and this is objectionable both in the order and its endorsement. If the issue raised in this petition is left unattended, it would cause not only delay, but the possibility of miscarriage of justice, where the dispute

has been opened on five fronts of the petitioner – company with M/s Escorts Limited not a party. In a public limited company, the liability is not personal to those who manage the affairs of the company.

Notice of motion.

On the asking of the Court, Mr. Vishal Garg, Additional Advocate General, Haryana, accepts notice on behalf of respondent No.1 and waives service on it.

Let notice be issued to respondent No.2 only for 01.06.2017.

Process dasti only.

While issuing notice of motion, I would request the Special Secretary to Haryana Government, Labour Department, Haryana, who signed the impugned reference order dated 27.02.2017 on behalf of the Governor of Haryana remitting to the Labour Court the dispute under Section 2(k) of the Industrial Disputes Act, 1947 to the Labour Court-II, Faridabad to remain present in Court on the next date of hearing so that the issue can be discussed in Court on the misdescription of parties and to avert such a possibility in the future. No doubt the power exercised by the appropriate Government is administrative and no hearing is required to refer disputes, but in cases of the present kind and the manner in which parties should be arrayed, they deserve, if not hearing, an opportunity to the management and the workers to point out the real disputants before they go to trial for adjudication of the disputes referred. The Special Secretary would address himself on this issue and also to ensure that real issues are framed realistically and in accordance with the Industrial Disputes Act and parties impleaded in proper form and from whom relief can flow and implementable awards passed. This is all the more necessary because the Labour Court would not ordinarily change the memo of parties of the disputes registered by it for determination.

The replies, if any, may await till such time as the Special Secretary appears so that the Court can explain remedial action resulting from wrongful impledment of parties, which can derail the trial and cause delays and

obstruction in the flow of justice.

As an interim measure, further proceedings before the Labour Court shall remain stayed till further orders.

A copy of this order be given to Mr. Vishal Garg under the signatures of Bench Secretary.

A photocopy of this order be placed on all the connected files.'

Thereafter, after discussion with the concerned Senior Officer, on 01.06.2017 a direction was given to the effect that the Labour Commissioner will be free to devise all other means which appear to him to be just and reasonable, other than above guidelines with a view to proper management when a dispute is referred to a Labour Court/Industrial Tribunal.

For ready reference, the order dated 01.06.2017 is reproduced herein as under:-

'The discussion in Court with Mr. Pankaj Aggarwal, IAS, has been productive covering matters set out in the interim order dated 15.05.2017 for which reasons the officer was requested to attend proceedings. Those can be summarized for future guidelines to the Labour Department while making references to the Labour Court/Industrial Tribunal, subject to provision in amended/added Section 2(2) of the Industrial Disputes Act, 1947.

(i) The Labour Commissioner, Haryana exercising powers of 'appropriate Government' to make reference under the Industrial Disputes Act, 1947 must take care that parties are impleaded properly with full description of identities.

(ii) The current and permanent address(es) of the disputing parties should be mentioned in the reference to ensure proper service through Labour Court when reference is registered. The photo copy of the Aadhar card

of the workman and the registered, business and active address of the employer should be incorporated in the reference. These can be obtained from the parties in writing before making reference. He may even ask for the photograph/s of the workman and the occupier of the establishment where work is performed and remit it with the reference for pasting on the Court file.

(iii) In disputes involving contract labour, attested photocopy of licenses and registration/s, if any, should be called for and annexed with the reference and the contractor should be impleaded as a necessary party.

(iv) Impleading of workman through authorized representative(s) and/or Advocate(s) should be avoided.

(v) In complicated matters, the Labour Commissioner may hear parties briefly to identify the real and disputed issue/s being referred for adjudication. Both the parties may be asked to specify the disputes in writing they wish to raise for adjudication and both be reconciled as per terms of reference.

(vi) The Labour Commissioner would fix a date for appearance in the Labour Court. It should be specified that proper service will be effected only by the Labour Court for appearance of parties. This will avoid ex parte proceedings on the first date, as witnessed by this Court in some cases.

(vii) Workman/workmen should be asked to supply his/her bank account details in case of award in his favour so that any amount awarded by Labour

Court goes directly into his/their bank accounts. This will ensure that awards are properly implemented and money, in case awarded, goes

to the rightful owner. This will ensure implementation of the awards.

Apart from the above, the Labour Commissioner will be free to devise all other means which appear to him to be just and reasonable, other than above guidelines with a view to proper management when a dispute is referred to a Labour Court/Industrial Tribunal.

List again on 18.07.2017.

Let a copy of this order be sent to the Labour Commissioner, Haryana, Punjab & Chandigarh (UT) or to the designated 'appropriate Government' to whom the functions of reference are delegated.

A photocopy of this order be placed on all the connected files.'

Learned counsel for the respondent has brought to the notice of this Court that following order dated 15.12.2018 was passed by this Court:-

'Mr.Bhandari, learned counsel appearing for the petitioner (s) submits that the parties have settled their dispute and prays that the interim order staying further proceedings before the Labour Court passed on 15.5.2017 may be lifted in order to enable the parties to make their statements before the Labour Court on 2.1.2019 that the matter has been compromised to the satisfaction of both the parties. In order to enable the parties to get their statements recorded, the stay order dated 15.5.2017 is vacated. Parties to appear before the Labour Court on 2.1.2019. With this observation, no orders are required to be passed in these petitions. As far as the general directions issued to the Labour Commissioner, Haryana, Punjab & Chandigarh (UT) in the order dated 1.6.2017 are concerned, the same shall remain alive for implementation by the State Government(s) in the Labour Department. The orders as may be passed by the Labour Court be placed on record of these cases.

With these observations, these cases stand adjourned to 15.1.2019.

A photocopy of this order be placed on the connected

files.'

During the resumed hearing of the matter, learned counsel for the petitioner submits that the necessary correction in the impugned order (Annexure P-6) has already been made. Essential relief stands granted. No further orders are called for.

With these observations, writ petitions are accordingly disposed of.

The parties are directed to place on record the orders passed by the Labour Court with respect to these cases in compliance of order dated 15.12.2018.

December 06, 2019

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**(GIRISH AGNIHOTRI)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO