

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14084 of 2017 (O&M)

Date of Decision: 19.07.2019.

United India Insurance Company Ltd.

...Petitioner

Versus

Sandeep Kumar and another

....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. D.R. Bansal, Advocate for the petitioner.

Mr. Vijay Saini, Advocate for respondent No.1.

B.S.WALIA, J (Oral).

CM No.17018-CWP of 2017

Application is under Article 227 of the Constitution of India read with Section 6 Rule 17 and Section 151 of Code of Civil Procedure for amendment of civil writ petition. The same is not objected to.

In view of the reasons as are mentioned in the application, which is duly supported by an affidavit, and no objection by counsel for respondent No.1, the same is allowed subject to all just exceptions. Amended writ petition is taken on record.

CWP No.14084 of 2017

1. Prayer is for quashing of order Annexure P/2 dated 28.04.2011, passed by the Special Secretary to Government of Haryana, Labour Department, referring the dispute amongst the parties

to the Labour Court, Panipat, in terms of Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') as also award Annexure P/1 dated 07.03.2017, passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal').

2. Solitary argument of learned counsel for the petitioner is that in terms of Section 2(a) of the Act, the appropriate government in the case of a dispute between the workman and the petitioner-Insurance Company is the Central Government, therefore, the reference of the dispute by the Special Secretary to the Government of Haryana, Labour Department, Vide Annexure P/2 to the Labour Court, Panipat under Section 10(1)(c) of the Act was without jurisdiction and the same ought to have been by the competent authority i.e. Central Government. Section 2 (a) (i), 4 and 10(1) of the Act is reproduced as under:-

2. Definitions:- In this Act, unless there is anything repugnant in the subject or context,--

(a) " appropriate Government" means--

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5A of the Dock Workers

(Regulation of Employment) Act, 1948 (9 Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956) or the Oil and Natural Gas Corporation Limited registered under the Companies Act 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16, of the Food Corporations Act, 1964 (37 of

1964), or the International Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India, the National Housing Bank established under Section 4 of the National Housing Bank Act, 1987 or an air transport service or a banking or insurance company, a mine, an oil- field, a Cantonment Board, or a major port, the Central Government, and

4. Conciliation officers:-

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

10. Reference of disputes to Boards, Courts or Tribunals:-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing;

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or

vexatiously given or that it would be inexpedient so to do, make a reference under this sub- Section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;

3. Admittedly, the respondent-workman is an employee of the United India Insurance Company Ltd. i.e. a Central Government Company in terms of the Central Insurance Business (Nationalization) Amendment Act 2002. Consequently, in terms of Section 2 (a) of the Act, the appropriate government in the case of the petitioner Insurance Company and under Section 4, for appointment of the Conciliation Officer, likewise under Section 10(1) (c) of the Act for reference of the dispute amongst the parties for adjudication, the appropriate Government is the Central Government. Consequently, the proceedings qua the dispute amongst the parties were to be dealt with by the appropriate Government i.e. the Central Government.

4. In the circumstances, conciliation proceedings, reference Annexure P/2 made by the Special Secretary to Government of Haryana, Labour Department as well as award Annexure P/1 passed by the Industrial Tribunal-cum-L:abour Court, Panipat, are actions *Coram Non Judice*.

5. Besides, as per the decision of Hon'ble the Supreme Court in **Chief Engineer, Hydel Project and others vs. Ravinder Nath and others 2008 (2) SCC 350**, following its decision in **Kiran Singh and others vs. Chaman Paswan and others AIR 1954 SC 340** besides other cases it is settled law that a judgment and decree passed by a Court without jurisdiction is a nullity and its invalidity can be set up even at the stage of execution etc. and that once the original decree has been held to be without jurisdiction and hit by the doctrine of *Coram Non Judice*, there would be no question of upholding the same merely on the ground that the objection as to jurisdiction was not taken at the initial, first appellate or second appellate stage. Relevant extract of the aforementioned decision is reproduced as under:-

“16 xx xx xx

The Court also relied upon the decision in Kiran Singh v. Chaman Pawan and others [(1955) 1 SCR 117: AIR 1954 SC 340] and quoted therefrom:

It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

xx xx xx xx”

“18 *Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there*

would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be allowed. In view of this verdict of ours, we have deliberately not chosen to go into the other contentions raised on merits. We, however, make it clear that we have not, in any manner, commented upon the rights of the plaintiffs- respondents, if any, arising out of the Labour Jurisprudence."

6. In the light of the position as noted above, reference Annexure P/2 dated 28.04.2011 and award Annexure P/1 dated 07.03.2017, are set aside being actions *Coram Non Judice*. Needless to mention the respondent-workman would be at liberty to take out appropriate proceedings in accordance with law.

7. Writ petition allowed in the aforementioned terms.

(B.S.WALIA)
JUDGE

19.07.2019

rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No