

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8266 of 2015

Date of Decision: 10.01.2019

Utariya Railway Mazdoor Union

... Petitioner

Versus

Union of India and others

... Respondents

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

Present: Mr. D.K. Nagar, Advocate,
for the petitioner.

Mr. Piyush Khanna, Advocate,
for respondent No.1.

RAJIV NARAIN RAINA, J.(Oral)

1. The Assistant Labour Commissioner (Central) Karnal exercising powers of the appropriate Government has declined to refer the industrial dispute raised by the Railway Mazdoor Union espousing the cause of Sh. Joginder, Ex-Khalasi for treating the period from September 24, 1981 to October 28, 1987 as qualifying service towards retirement benefits. Reference has been declined by the impugned order dated March 04, 2014 by recording that on perusal of the file and documents it reveals that there is no discrimination "towards the workman by giving retiral benefits at the time of retirement by the management", therefore, the plea of discrimination raised by the Union in its application/demand notice dated May 01, 2013 has not been found to be correct. The officer has held that the application is not maintainable at this stage.

2. It is well settled that the appropriate Government cannot don the robes of an adjudicator and make comments on the merits of the dispute.

The power to make a reference of a dispute under Section 10 read with Section 2 (k) of the Industrial Disputes Act, 1947 is an administrative act. The Assistant Labour Commissioner (Central) Karnal has clearly exceeded his jurisdiction leaving the impugned order vulnerable to challenge in writ jurisdiction. The impugned order declining reference is legally unsustainable.

3. Accordingly, the petition is allowed and the impugned order is quashed. The Assistant Labour Commissioner (Central) Karnal is directed to refer the dispute to the Labour Court exercising territorial jurisdiction over the subject matter dispute. The reference be made within one month.

4. The dispute being rather old, it is expected that when the reference is registered before the Labour Court it will make an earnest endeavour to decide the dispute as early as possible by fixing in advance a schedule of dates for parties to stick to, to achieve the milestones in the trial till conclusion.

(RAJIV NARAIN RAINA)
JUDGE

10.01.2019

manju/Vimal

Whether speaking/reasoned Yes

Whether reportable No