

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-9211-2020 (O&M)

Date of decision : 10.07.2020

Glaxo Smith Kline Consumer Healthcare Ltd.

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and
others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Abhivadya Sood, Advocate for the petitioner.

Ms. Deepali Puri, Addl. A.G. Punjab.

ANIL KSHETARPAL, J.

The petitioner-company has filed the present writ petition under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari seeking the quashing of an order passed by the Labour Commissioner, Punjab sending a reference for adjudication to the Industrial Tribunal/Labour Court after forming an opinion that an industrial dispute arises under the Industrial Disputes Act, 1947 vide communication dated 23.08.2019.

This Court has heard learned counsel for the petitioner at length and with his able assistance gone through the writ petition and documents filed in support thereof. This Court is of the considered view that the petitioner is required to be relegated to the remedy before the

Industrial Tribunal-cum-Labour Court, Patiala, i.e. the Court, where the industrial dispute has been referred for adjudication. Therefore, it would not be appropriate for this Court to adjudicate upon the dispute on merits. However, the brief reasons for forming an opinion, are as under:-

- 1) One previously referred industrial dispute between the petitioner-company and its Workers' Union is pending before the Industrial Tribunal, Patiala pursuant to a reference made by the Labour Commissioner, Punjab vide order dated 02.08.2019. The operative part of the order of reference, reads as under:-

“Demand No.1(a)

“Whether the demand of the Union of increasing 70% of the total salary (Basic + illeg.) of the worker of the company and of giving them time bound promotion and to fit them in the next grade is liable and acceptable? If yes then, what are the benefits, and in what extent, the concerned workers are rightful for?”

Demand No.6(b)

“Whether the demand of the Union to increase the amount of the cheque to Rs.1 lacs from the amount of Rs.15000/- given by the Management to the worker at the time of retirement as retirement gift instead of farewell party is acceptable and liable? If yes then, what are the benefits, and in what extent, the concerned workers are rightful for?”

Demand No.6(c)

“Whether the demand of the Union to increase the amount of Rs.10,000/- instead of Rs.3500/- given by the Management to the workers as gift after the compromise is resolved into is acceptable and liable? If yes then, what are the benefits, and in what extent, the concerned workers are rightful for?””

While aforesaid reference before the Industrial Tribunal was pending, an application was submitted before the Additional Labour Commissioner under the signatures of General Secretary of the Workers' Union intimating that pending adjudication on the earlier reference, the Management has started to increase the work load on the workers and started rapidly shifting the workers from one Department to the other. It was submitted that the Management might be taking these steps with the feeling of revenge. It appears that the Assistant Labour Commissioner, directed the Labour Enforcement Officer, Grade-II, Nabha to enquire into and report. The Labour Enforcement Officer, Grade-II, visited the factory, held consultation with the Union as well as representatives of the Management, and thereupon, formed an opinion that it was not possible to settle the dispute by way of compromise/settlement and hence, if considered appropriate forward this dispute/matter to the Industrial Tribunal-cum-Labour Court for adjudication. The Labour Commissioner accepted the recommendation and forwarded the following question to Industrial Tribunal/Labour Court, Patiala vide order dated 23.08.2019:-

“Whether as per the statement of the Union, work load is being increased upon the workers by the Management through making repeated alteration in the number of workers? If yes then, what are the benefits in this regard, which the concerned workers are rightful for?”

It may be noted that the writ petitioner does not dispute or challenge the pendency of the industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Patiala in accordance with order of reference dated 02.08.2019.

- 2) The appropriate Government, in discharge of its administrative function, after forming an opinion that an industrial dispute exist, decides to refer the dispute to the Industrial Tribunal/Labour Court for adjudication. The scope of judicial review regarding existence of a live industrial dispute is very narrow. Basically, reference of an industrial dispute enables the Industrial Tribunal/Labour Court, as the case may be, to adjudicate upon the dispute referred to. The appropriate Government while making a reference does not decides on the merits or demerits of the dispute. At that stage, the Government is only expected to form an opinion whether an industrial dispute exists and required to be adjudicated upon or not.

Now let us briefly examine the arguments of learned counsel for the petitioner.

Learned counsel has submitted that no demand notice has been sent to the petitioner-company and, therefore, no reference could be made. He submitted that in absence of the demand notice, an application to the Assistant Labour Commissioner is not sufficient to make a reference in this regard. It may be noted that the industrial dispute between the petitioner and its Workers' Union had already been referred by the Government to the Industrial Tribunal vide order dated 02.08.2019. In this writ petition, correctness of order dated 02.08.2019 is not being questioned. The Workers' Union had informed the Additional Labour Commissioner with regard to alleged harassment being caused to the workers on account of apprehended feeling of revenge. The Assistant Labour Commissioner, deputed Labour Enforcement Officer, Grade-II, Nabha to enquire into the

matter and submit a report. It is apparent from the reading of the report (Annexure P-5) that Labour Enforcement Officer, Grade-II, did visit the factory premises and held consultation with Workers' Union as well as representatives of the Management. Thus, the Management was apprised of grievances of the workers. In such circumstances, hyper-technical objection taken by the petitioner to assail the order of reference at this stage is not justified. It would be more appropriate for the petitioner to take objections before the Industrial Tribunal/Labour Court, which would be in a better position to adjudicate upon the same in accordance with law.

Next submission is that since no conciliation proceedings took place, therefore, no reference could be made. It would be more appropriate for the petitioner to raise this objection before the Industrial Tribunal-cum-Labour Court, Patiala where reference is pending. Prima facie, some sort of conciliation proceedings were held by the Labour Enforcement Officer, who visited the factory premises, as noted in the report (Annexure P-5).

Learned counsel for the petitioner has further submitted that the Labour Court does not have power to quash the reference. No doubt, the Labour Court does not have power to quash the reference, however it has the power to reject the reference.

It has been next submitted that the reference is without jurisdiction. In the considered view of this Court, it would be open to the petitioner to raise this objection before the Industrial Tribunal-cum-Labour Court which would in a better position to adjudicate upon the same. Prima facie, the reference forwarded by the Labour Commissioner is in accordance with the provision of the Industrial Disputes Act, 1947.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court in the case of **Sindhu Resettlement Corporation Limited Vs. Industrial Tribunal of Gujarat and others, AIR 1968 Supreme Court 529**. In that case, reference of industrial dispute to the Industrial Tribunal by the appropriate Government was never challenged before the Court. The Tribunal ordered reinstatement of the workmen against which writ petition filed before the High Court was dismissed. That's how the matter came up before the Supreme Court. In para 2 of the judgment, the Court culled out three points for consideration. Point Nos.1 and 2 were decided in favour of Management. The points culled out are extracted as under:-

“2. In this appeal, three points have been urged on behalf of the appellant to challenge the orders of the Industrial Tribunal and the High Court. The points are:

(1) that respondent No.3, having been given permanent appointment in Sindhu Hotchief and having obtained retrenchment compensation from that Company, could not claim that he was still holding a post in the appellant Corporation and could not, therefore, claim reinstatement;

(2) that the dispute that was raised by respondent No.3 as well as respondent No.2 with the management of the appellant was confined to compensation for retrenchment and did not relate to the validity of the retrenchment or reinstatement, so that the Government of Gujarat had no jurisdiction to refer the dispute to the Industrial Tribunal which it did; and

(3) that, in any case, since the validity of the retrenchment of respondent No.3 by the appellant was not challenged, the Tribunal committed a manifest error in

directing reinstatement instead of awarding retrenchment compensation.

After hearing learned counsel for parties, we have come to the conclusion that the first two grounds urged on behalf of the appellant must be accepted, while the third does not arise.”

Learned counsel for the petitioner has drawn attention of the Court to certain observations made in para 4 of the judgment which do not have any application to the facts of the present case.

Learned counsel has further relied upon another judgment of Hon'ble the Supreme Court in the case of **Rajasthan State Road Transport Corporation Vs. Krishna Kant etc. (1995) 5 SCC 75**. In this judgment, Hon'ble the Supreme Court was examining whether civil suit for declaration that the order terminating services of the workmen is illegal and invalid, would be maintainable before the Civil Court or not particularly when the termination of services are alleged to be in violation of provisions of Industrial Disputes Act, 1947 and its sister enactments.

Learned counsel for the petitioner has also relied upon judgment of Hon'ble the Supreme Court in the case of **Prabhakar Vs. Joint Director Sericulture Department and another, (2015) 15 SCC 1**. Learned counsel has drawn attention of the Court to para 21 of the judgment wherein certain observations made by Hon'ble the Supreme Court in the case of **Western India Match Company Limited Vs. The Western India Match Co. Workers Union, (1970) 1 SCC 225** have been quoted. In this case, the order of reference passed by the Commissioner referring an industrial dispute to the Industrial Tribunal/Labour Court was never

questioned. The labour Court rejected the reference whereas in the writ petition, the award passed by the Labour Court was reversed. The judgment passed by the learned Single Judge was upheld by the Division Bench as well as by the Supreme Court. Hence, this judgment is also not applicable.

Keeping in view the aforesaid observations, the present writ petition is disposed of by relegating the petitioner to the remedy before the Industrial Tribunal-cum-Labour Court. The observations made by this Court while disposing of the writ petition shall not be construed as an expression of opinion on the merits of the case and the Industrial Tribunal-cum-Labour Court would proceed to decide the industrial dispute in accordance with law uninfluenced by the observation made herein.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.07.2020*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**