

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

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CWP No.11745 of 1995 (O&M)
DATE OF DECISION : 29th July, 2022

**M/s. Hans Raj Mahajan and sons Private Limited, Jalandhar,
through its Managing Director**
.... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal, Punjab, Chandigarh &
another**
.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Animesh Sharma, Advocate for the petitioner.
 Mr. Naveen Kumar, Advocate for
 Mr. K. L. Arora, Advocate for respondent No.2-workman.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioner has filed this petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing the impugned award dated 06.01.1994 (Annexure P-5) passed by respondent No.1, being against the provisions of Industrial Dispute Act, 1947 (in short, the Act); along with certain other prayers.

2. The brief facts, as involved in the present case are; that the petitioner-company was engaged in manufacturing of sports goods. The leg-guard manufacturing section of this company was having several problems. Following the constraints the leg-guard section of the factory was closed from 16.08.1983 by following the provisions of the Act, which were prevalent at that time. The workmen were paid the compensation at the time of closure of the leg-guard section. Therefore,

no dispute was ever raised by any workman. However, four years later, respondent No.2-the employees union, raised a demand notice on 05.03.1987. In the said demand notice as well, there was no dispute that the factory already stood closed. However, since respondent No.2-employees union was insisting that there was no justification for closure of the unit, therefore, the dispute was raised. The conciliation proceedings having failed, the matter was referred to the Labour Court. The Labour Court has answered the reference by altering the terms of reference and has passed the award for reinstatement of workmen with continuity of service and back wages. Hence, the present petition.

3. It is submitted by counsel for the petitioner that the petitioner, at the relevant time, was not even required to obtain any permission for closure from any government authority. Therefore, considering the overall situation of the factory, the leg-guard section of the same was closed down and the workers were retrenched by paying the retrenchment compensation. However, the workers union raised the dispute four years later without there being any basis. Since there was no dispute raised by any individual workman, therefore, the reference made by the authorities to the Labour Court was also not regarding termination of services of any individual workman. It was only regarding justification for closure of the unit. Although, the justification for closure being non-justiceable, even the reference qua the justification for the closure could not have been made by the authorities, however, even that reference was not answered by the Labour Court. On the contrary, the Labour Court has changed the term of reference at its own level and has entered into the adjudication of the legality of alleged termination of the

services of the workmen. Hence, the entire basis for the Labour Court to proceed in the matter is wrong. Hence, the relief of reinstatement with back wages and continuity of service, is totally illegal. The counsel has submitted that the Labour Court could not have gone beyond the terms of the reference. The scope of the authority of the Labour Court was circumscribed by the terms of reference made by the appropriate Government. Any decision beyond the terms of the reference is unauthorized and is liable to be set aside. The counsel has relied upon the judgment of Supreme Court passed in the case of ***Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. And Anr., AIR 1979 SC 1356***, in this regard. The counsel has further submitted that the Labour Court has not even answered the reference made by the appropriate Government. It has only delved into the modified reference, as transformed by the Labour Court itself, and has adjudicated upon the validity of termination of service of the workman. Therefore, neither the answer given by the Labour Court, is within its authority nor the actual terms of reference made to it by the appropriate Government, has been answered by it. Hence, the Labour Court has gone wrong on both the counts.

4. On the other hand, the counsel for respondent No.2 has submitted that the reference has rightly been answered by the Labour Court. Since the demand raised by respondent No.2 was regarding illegal termination of the workmen, therefore, the Labour Court had rightly culled out the actual dispute between the parties and has read the reference in the modified form; as deemed appropriate by the Labour Court. Accordingly, the adjudication has been made by the Labour Court

qua the validity of the termination of service of the workmen. Hence, the award does not call for any interference by this court.

5. Having heard the counsel for the parties, this court finds substance in the arguments raised by counsel for the petitioner-employer. The record shows that the original reference made by the Labour Court was as under:

*Whether the action of management in closing the leg-guard Section w.e.f. 16th August, 1983, is justified and in order ?
IF not, to what relief the workmen (as per list attached) are entitled ?*

6. The perusal of the reference shows that it related to the justification for the act of closure. Any other relief for the workman could have been considered only on answer of this point against the petitioner. Therefore, the factum of closure was not a matter in dispute between the parties. Rather, seeking reference on justification of closure presumes existence of the fact of closure of the unit and the retrenchment of the employees. There had been no dispute ever raised qua validity of retrenchment by the employees. Admitted closure of unit rules out any scope for relief of reinstatement. Hence, the Labour Court has obviously travelled beyond the terms of reference by reading it in a manner different than the actual reference made by the appropriate Government and by entering into aspect of legality of termination of service of workmen. Such an action is beyond the sanction of law. This aspect has already been settled by the Supreme Court in the judgment rendered in the case of **Pottery Mazdoor Panchayat (supra)**. This court finds reliance of the counsel for the petitioner on the above said case to be well placed. The Labour Court

has committed patent illegality by travelling beyond the terms of the reference and reading the same in modified terms as per its own discretion. It needs to be noted that since there was no reference qua validity of the alleged termination of the service of the workmen, therefore, the Labour Court was never called upon to answer the question of validity of the alleged termination of service of the workmen or desirability of re-instatement. Hence, the Labour Court has gone wrong in law in ordering the reinstatement of the workman with continuity of service and back wages, despite the admitted fact of closure of the unit as such.

7. The above said aspect has also been highlighted by the fact that the positive case of the petitioner, from the beginning, had been that the petitioner had paid retrenchment compensation to the respective workman at the time of closure of the leg-guard section of the factory. This aspect was not disputed by anyone of the workman as such. They had never come forward before any authority with a complaint that they were not paid the compensation. It is only the employees' union which has raised this dispute much belated, though the union has also raised this dispute only collaterally; and without any explicit request or permission of the individual workman. The union itself has approached the authorities after a gap of more than four years of the closure of the leg-guard section of the factory by the petitioner. Even during the proceeding before the Labour Court, except the self-serving statement of one workman, no evidence is led on file to show that the workmen were not paid their dues at the time of their retrenchment. Moreover, even the said witness produced by the union had admitted that leg-guard section of the factory

was closed by the employer, ruling out any scope for re-instatement. Hence, the relief granted by the Labour Court is totally without any basis.

8. The reference made by the appropriate Government to the Labour Court was, primarily, regarding justification of the closure as such. However, the Supreme Court in the above said case has also held in para 16 of its judgment that justification for closure could not even be a labour dispute which could have validly been referred to the Labour Court for adjudication. This Court also finds that, in fact, at the relevant time no permission for closure of the leg-guard section, was required, therefore, the closure would be within the sole discretion of the employer, of course subject to compliance of other provisions of the Act relating to payment of compensation etc. However, the fact that no permissions were required, would show that justification of the closure, per se, could not be an industrial dispute and could not have been made a subject matter of the reference as such. The justification of closure was a non-justiceable issue. Moreover, the labour court has not even answered the issue of justification of closure.

9. In view of the above, this court finds that the Labour Court has travelled beyond the scope of the reference and has not answered the reference made to it, as such. Moreover, the issue referred to the Labour Court itself was an issue non-referable as a labour dispute. Therefore, this court finds that the entire proceedings before the Labour Court are beyond the sanction of law. Hence, the award passed by the labour court deserves to be set aside.

10. Accordingly; the impugned award dated 06.01.1994 (Annexure P-5) passed by the Labour Court, is set aside. The writ petition is allowed.

11. All the pending applications, if any, stand disposed of accordingly.

29th JULY, 2022
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>