

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

209

CWP No.15794 of 2017 (O&M)
DATE OF DECISION: 19th JULY, 2022

M/s HMM Infra Ltd.

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ashwani Talwar, Advocate,
for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana
For respondent Nos.1 to 3.

Mr. Balbir Singh Saini, Advocate,
for respondent Nos.4, 8, 11, 15 and 17.

Mr. Anmol Verma (Khajwaniya), Advocate,
for respondent Nos.9, 16, 34, 42, 48, 62, 68, 80 and 84.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of references dated 17.08.2011 as endorsed on 21.09.2011 (Annexures P-2/1 to P-2/81), made by respondent No.1, vide which the dispute regarding reinstatement, continuity, back wages and other benefits, has been referred to the Industrial Tribunal, Ambala, with certain other prayers made in the present petition.

The facts in brief, as averred in the present petition, are that the petitioner is an employer engaged in manufacturing activity of steel structures; including heavy steel beams for power plants, bridges etc. Earlier the name of the establishment was M/s HMM Coaches Limited. The respondents No.5 to 85 were working with M/s HMM Coaches Limited. While in service, the services of respondents No.5 to 85 were dispensed with. Later on, the establishment M/s HMM Coaches Limited was wound up. However, the financial liabilities of that establishment were taken over by the present petitioner w.e.f. 08.11.2011. A dispute was raised regarding termination of services of respondents No.5 to 85 before the Labour Authorities. The appropriate government made a reference of the industrial disputes regarding termination of the services of respondents No.5 to 85. However, since the issue of termination was raised before the Labour Authorities jointly, therefore, the reference has been made by the government regarding validity of termination of services of 81 workmen (respondents No.5 to 85). But the endorsement of reference contains the name of individual workman; separately. Accordingly, 81 letters of reference were issued by the government. Hence, the matter reached before the Labour Court through 81 different letters but without mentioning the validity of termination of '81 workmen'. The proceedings in the reference have been going on before the Labour Court since 04.10.2011. Before the Labour Court, only one witness has been examined; and partly cross-examined so far. The matter had not proceeded further before the Labour Court. At this stage, an application was made by the petitioner for segregation of the individual references for separate decision. However, the Labour Court has rejected

the said prayer vide order dated 23.07.2012 (Annexure P-7) on the ground that reference made to the Labour Court refers to the validity of termination of service of 81 workmen jointly, therefore, the case has to be tried jointly and has to be decided by a single award. The petitioner had also made a prayer to the Labour Court for requiring separate claim statement from the individual workman. However, even that was declined by the Labour Court. That is how the matter has reached before this Court, against the above said two orders of Labour Court.

Arguing the case, learned counsel for the petitioner has submitted that since the dispute of termination of services pertains to individual workmen, therefore, the reference made by the government has to be taken as a separate reference qua the particular workman mentioned in the endorsement of the reference letter. This intention of the appropriate government is also clear from the fact that 81 separate letters have been written by the appropriate government for making reference. Learned counsel for the petitioner has further submitted that the facts involved in the matter differ from workman to workman. Therefore, the case of each workman has to be considered and decided separately lest the individual workman should suffer injustice for the sake of brevity and conciseness. Learned counsel for the petitioner has relied upon the judgment rendered by this Court in the case of *The Indian Express (P) Ltd. Versus The State of Haryana and others, CWP No.7590 of 2019, decided on 19.03.2019*, to buttress his arguments. Hence, it is submitted that the Labour Court be directed to segregate the cases of all 81 workmen and to take up and decide the references individually.

On the other hand, learned counsel for respondents No.4, 8, 11, 15 and 17 has submitted that the proceedings of conciliation itself were initiated through the trade union. After the failure report, accordingly, the reference was also made jointly; in which the trade union is mentioned as a party to the dispute before the Labour Court. Since, there was a single reference, therefore, even the government has admitted in the written statement that it was a jointly made reference. Therefore, the Labour Court has rightly declined the prayer of the petitioner and has rightly proceeded further with joint adjudication of the matter. Learned counsel has further submitted that the Trade Union is a registered Trade Union. Therefore, it can legitimately raise the dispute and represent the workman before the Labour Court. Learned counsel has further submitted that the demand notice raised by the workman was under Section 2 (k) of the Industrial Disputes Act, 1947 (for short the Act), therefore, it could not be an individual reference. For individual reference, the matter was required to be raised under Section 2 (A) of the Act. Hence, the Labour Court is rightly proceedings jointly.

Learned State counsel has submitted that the government has made reference of all the 81 workmen by sending separate references to the Labour Court. The very fact that 81 separate letters have been sent, shows that the matter was intended to be decided separately. However, since the proceedings were initiated in the first instance jointly qua 81 employees, therefore, by mistake, the reference mentions qua validity of the termination of '81 employees', as such. Referring to the written statement, learned State counsel has submitted that the reference has been made under Section 10 (1) (c) of the Act, therefore, the matter is required

to be decided by the Labour Court but the reference mentions as reference to the Industrial Tribunal. However, that does not adversely affect the power of the Labour Court to adjudicate upon the issue because powers of both are vested in the same Court. Learned State counsel has further submitted that mere mention of the Trade Union as a party to the dispute could not confer any status upon any Union to represent the grievance of individual workman. Hence, the State has no objection if the Labour Court is directed to decide the references individually and separately; in view of the individual facts involved in case of each case of workman. He has also referred to the letter communicated by the government to the office of Advocate General saying that the references are to be decided separately.

Having heard learned counsel for the parties, this Court finds substance in the arguments raised by learned counsel for the petitioner. It is not even in dispute that the matter pertains to the legality of termination of services of the workmen. The dispute relating to termination of service of workman is covered by the matters mentioned in Schedule II attached to the Act. Therefore, as per the law, the matter is required to be referred to the Labour Court. The reference letter also mentions the provisions of Section 10 (1) (c) of the Act while referring the matter. Therefore, the matter has to be taken as a reference made to a Labour Court instead of treating the same to be a reference made to the Industrial Tribunal. In any case, the matter regarding the legality of termination of service of workmen is to be decided. Whether it is decided by the Labour Court or the Industrial Tribunal. This aspect is totally immaterial because the forum which is seized of the matter is exercising

powers of both the authorities. The dispute, in fact, is regarding right to represent the individual workman before the Labour Court. The reference order mentions 'HMM Coaches Workers Union' as a party to the dispute and has made the reference by mentioning the aspect of legality of termination of services of 81 workers. Therefore, the net question is whether the individual workman should represent themselves or the Trade Union mentioned in the reference order has the right to represent them. If the individual workman is to represent his case, either directly or through some authorized representative, then by any means, the matter is required to be decided separately as per the assertions made by the individual workman.

To appreciate whether the Trade Union can even represent a workman in the dispute, it is appropriate to have a reference to certain provisions of the Act as contained in Section 2 (k) and Section 36 of the Act, which are reproduced herein below:

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

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(k) “industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any person;

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“36. Representation of parties.-

(1) *A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—*

- (a) *any member of the executive or office bearer of a registered trade union of which he is a member;*
- (b) *any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;*
- (c) *where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.*

(2) *An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by —*

- (a) *an officer of an association of employers of which he is a member;*
- (b) *an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;*
- (c) *where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorized in such manner as may be prescribed.*

(3) *No party to a dispute shall be entitled to be represented by a legal practitioner in any*

conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.”

A perusal of the statutory provisions make it clear that the Act contemplates the industrial dispute only to be difference of opinion or dispute between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any person. Hence, it is clear that the Act does not contemplate any dispute or difference of opinion between the Employer and the Trade Union as an industrial dispute. Moreover, the dispute has to be with reference to the terms of employment or employment of any individual workman or any person; as such. Moreover, the provision of Section 36 of the Act makes it clear as to who can represent a workman in the proceedings before the Labour Court. Section 36 of the Act prescribes as to whom a workman, who is party to the dispute, is entitled to authorize to represent him. The Act specifically provides that the workman is entitled to get assistance and get representation through member of the executive or office bearer of any registered Trade Union or any member or officer of a Federation of Trade Unions. Therefore, it is clear that under the statutory provisions, so far as the dispute of individual workman is concerned, the Trade Union, as

such, has not been given any statutory recognition to represent an individual workman. A workman can get assistance of any member of executive or office bearer of any registered Trade Union. Needless to say that the Trade Union is separately defined under the provision of Section 2 q (qq) of the Act. Despite recognizing existence of the Trade Union, the Industrial Disputes Act has not conferred any right upon the Trade Union as such; to represent a workman in the proceedings before the Labour Court. However, individual member of Executive of Trade Union or its office bearer has been permitted to represent a workman, if the workman so authorizes him. It needs no emphasis that the Trade Union and its executive member or office bearer is not the same thing. While the Trade Union would work through its resolutions, the individual executive member or office bearer would act on authorization of workman; irrespective of consent or authorization by the Trade Union in that regard. The reason for such right conferred upon the workman to get representation through executive member or office bearer of the Trade Union is that such executive member or office bearer has been conferred a special status of 'Protected Workman' by Section 33 of the Industrial Disputes Act; with immunity against any action by the employer for representing a workman in a dispute. Therefore, only to ensure fearless representation on behalf of the workman, this provision has been made. Although Section 10 of the Industrial Disputes Act contemplates raising a dispute jointly, however, on failure of conciliation, if the dispute pertains to termination of individual workman, then the reference to the adjudicatory body has to be qua illegality of individual workman, as contemplated by Schedule-II of the Act, be that to a Labour Court under

Section 10 (c) or to an Industrial Tribunal under Section 10 (d) of the Act. Hence, the reference itself is wrongly mentioning the Trade Union 'HMM Coaches Workers Union' as a party to the dispute in the reference letter. This illegality deserves to be rectified so that the matter can be taken to the logical end through the appropriate legal process and the appropriate legal steps. The very fact that at serial No.4 in the endorsement, name of individual workman is mentioned, in the reference order; makes the intention of the appropriate government clear that it was not intended to be a joint reference and to be decided jointly. Accordingly, even the government has sent a communication dated 02.12.2021 to the office of the Advocate General, Haryana intimating them that the references are to be decided separately by the Labour Court; as individual cases as per the facts of each case.

In view of the above, this Court finds sufficient substance in the arguments of the counsel for the petitioner that the orders of the Labour Court be set aside and a direction be issued to the concerned Labour Court to take up the cases of 81 workmen individually and to decide the same, in accordance with law.

Another aspect which has come up during the arguments is that since the matter is pending before the Labour Court since 2011, therefore, some proceedings of the case might have already been undertaken. However, learned counsel for the petitioner has pointed out that so far only one witness has been examined on behalf of the workman and even his cross-examination was not completed. Therefore, the process of adjudication is at the initial stage. Hence, even this aspect would not stand in the way of the Labour Court in taking up the cases of

individual workman separately and to decide the same, in accordance with law.

Accordingly, the present petition is allowed. The impugned orders passed by the Labour Court are set aside. The Labour Court concerned is directed to take up the reference of individual workman as mentioned at serial No.4 in the reference letter and separate copy of which has already been sent to the Labour Court. The Labour Court shall record the evidence separately in all these references and shall decide the same as per the individual facts of the case of individual workman, in accordance with law.

Since, the matter is pending since the year 2011, therefore, the Labour Court is impressed upon to decide the references at the earliest possible, preferably within a period of one year from the date of receipt of certified copy of this order.

The pending miscellaneous applications, if any, are also disposed of as such.

19th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes