

**CM-17700-CWP-2018 IN/AND
CWP-660-2018 (O&M)
Date of Decision: 01.09.2022**

Versus

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Mr. Mohan Singla, Advocate,
for respondent No.7.

CM-17700-CWP-2018

For the reasons mentioned in the application, the same is allowed and the short reply filed on behalf of respondent No.7 is taken on record.

Main case

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the Reference Order dated 23.05.2017 (Annexure P-1) to the extent of reference made at Sr. No.(iii); and further prayed that during the pendency of the present writ

petition, further proceedings before the Industrial Tribunal, Rohtak, may kindly be stayed only to the extent of the dispute regarding suspension of respondents No.3 to 12 by the petitioner.

There is no representation on behalf of the private respondents, except respondent No.7.

Learned counsel for respondent No.7 has submitted that respondent No.7 has no concern with the petitioner-employer. On the contrary, he has never worked with the petitioner-employer. Therefore, it is submitted that respondent No.7 has no objection if this writ petition is allowed.

Learned counsel for the petitioner has submitted that the reference made by the appropriate government to the Labour Court involves several issues. The petitioner-employer is not aggrieved against the reference on the points except Point No.(iii), which reads as under:-

“(iii) Whether the action of the said management in suspending 10 regular workers (list enclosed at Annexure C) is legal and justified or not? If not to what relief they are entitled to?”

On the aspect of the reference on the above-said issue, learned counsel for the petitioner has submitted that the petitioner-employer had put the respondents-workmen under suspension in contemplation of the disciplinary inquiry against them. Therefore, the action initiated against the respondents-workmen was not any order of punishment or relating to any other aspect involved in the Second or Third Schedules attached to the Industrial Disputes Act, 1947 (for short, 'the Act). Therefore, the reference

on the issue of suspension alone could not have been made by the appropriate government. Secondly, the action being taken by the petitioner-employer is in accordance with the Standing Order No.DSO/48074 dated 15.12.2014, issued by the Additional Labour Commissioner-cum-Certifying Officer, Haryana, applicable to the establishment of the petitioner-employer. The stage of the proceedings is intermediary in nature and on conclusion of which, the dispute may not even survive between the parties in some given set of facts and circumstances. Hence, the reference made by the Government is without sanction of law and is totally premature.

There is no opposition from the side of the respondents to the arguments made by the learned counsel for the petitioner. Otherwise also, the petitioner has referred to the afore-said Certified Standing Order applicable to the petitioner-employer which permits the petitioner-employer to put the workmen under suspension during or in contemplation of the disciplinary proceedings against the respondents-workmen. Not only that, the petitioner-employer is paying the suspension allowance to the respondents-workmen, who have been placed under suspension. Hence, nothing can even be alleged to be in violation of any law, at this stage. The employer cannot be pre-empted or estopped from proceeding against the workman in accordance with law. Moreover, suspension of a workman is not included in either of the schedules which prescribe the subject matters which could be referred to the Labour Court or to the Industrial Tribunal. Therefore, this Court finds substance in the arguments raised by the learned counsel for the petitioner that, at this stage, there does not exist a dispute

referable to the Labour Court, in terms of the provisions of the Act. Hence, the reference made by the appropriate Government, vide order dated 23.05.2017 (Annexure P-1) is set aside qua the issue referred in Clause No.(iii) i.e. regarding validity of suspension of workman.

Accordingly, the present petition is allowed, in the above-said terms.

(RAJBIR SEHRAWAT)
JUDGE

01.09.2022
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No