



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

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**CWP-15313-2000 (O&M)
Decided on : 06.05.2024**

Kurar Cooperative Agricultural Service Society Ltd.

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. M.K. Dogra, Advocate
for the petitioner(s).

Mr. Anil Bansal, DAG, Punjab.

Mr. Raj Kaushik, Advocate and
Mr. Piyush Aggarwal, Advocate
for respondent No.4.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Society, has filed the instant writ petition for seeking quashing of the impugned order of reference dated 09.08.1999 (Annexure P-4), passed by respondent No.2 – whereby, Addl. Labour Commissioner, Punjab, in exercise of the powers conferred by Section 2-A and Clause C of Section 10(1) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), and vide Government Notification No.S053/CA14/47/S.39/88, dated 09.08.1988, referred the industrial dispute to the Labour Court, Patiala, for giving award within three months.

Following question was referred for its adjudication:-

“Whether the termination of services of worker Sh. Ravi Kumar by the management is justified and proper ? If not, what relief should be given to the worker.”

2. By way of filing the present writ petition, petitioner – Society, submits that the same dispute was earlier considered by respondent No.2, and had concluded that no industrial dispute arises, and therefore, no reference was forwarded for its adjudication. Relevant part of the order dated 23.12.1993 (Annexure P-3), vide which, the reference was declined, is reproduced as under:-

“Sub:- Regarding Demand Notice dated 1.8.93.

It is clarified by taking your attention towards above demand notice dated 1.8.93 that demand made in this is not fit for reference for adjudication, because your service has been terminated by the management after conducting complete inquiry.

*Sd/-
Addl. Labour Commissioner,
for Labour Commissioner Punjab.”*

3. One legal submission raised by counsel for the petitioner – Society, is that, once the demand notice had already been decided by saying that no industrial disputes exists, as per settled proposition of law, same demand notice could not be reconsidered for its reference to the Labour Court for adjudication.

This way, through present writ petition, petitioner – Society, raised two major legal issues, i.e.;

- (i) Whether respondent No.2 (Labour Department) is justified in making the reference second time, without giving liberty of hearing to the petitioner – Society ?*
- (ii) Whether the Government is justified in making reference in delayed and stale claims for adjudication ?*

4. On the previous date of hearing i.e. 25.04.2024, counsel representing respondent No.4 – workman, relied upon the judgment of the Hon’ble Apex Court rendered in **M/s Avon Services Production Agencies (P) Ltd. vs. Industrial Tribunal, Haryana and others, 1979 AIR (Supreme Court) 170 : Law Finder Doc Id #104709**, and submitted that the law laid down by the Hon’ble Apex Court still holds the field. Thereupon, counsel for the petitioner – Society, sought an adjournment to go through the said case law cited by counsel for respondent No.4.

Order dated 25.04.2024, says as under:-

*“Present: Mr. M.K. Dogra, Advocate and
Mr. Cyrus Chauhan, Advocate
for the petitioner.*

*Mr. Raj Kaushik, Advocate and
Mr. Piyush Aggarwal, Advocate
for respondent No.4.*

Learned counsel for respondent No.4 submits that initially, no reference was made by the State Government after issuance of demand notice by the workman (respondent No.4), rather it was declined vide order dated 23.12.1993 (Annexure P-3). Again, a request was made by the workman to consider the issue raised in the demand notice and thereupon, vide order dated 09.08.1999 (Annexure P-4), the industrial dispute was referred under Section 10 (1) (c) of the Industrial Disputes Act, 1947 for its adjudication to the Labour Court. Thus, this is the second reference which is under challenge at the instance of the petitioner-society (Management).

*Learned counsel for respondent No.4 relies upon the judgment of Hon’ble the Apex Court, titled as **‘M/s Avon Services Production Agencies (P)Ltd. Vs. Industrial Tribunal, Haryana and others’, 1979 AIR (Supreme Court) 170, Law Finder Doc ID #104709**, and submits that the second reference is maintainable and there is no bar to decide the dispute, once*

the same has been referred by the Office of Labour Commissioner, after due application of mind.

Learned counsel for the petitioner seeks some time to go through case law cited by the counsel for respondent No.4.

Adjourned to 06.05.2024. ”

5. Today, Mr. M.K. Dogra, learned counsel for the petitioner – Society, submits that against the proposition of law as cited in **M/s Avon Services Production Agencies (P) Ltd.’s case (supra)**, he could not lay his hand on any other judgment.

6. The relevant paragraphs No.6, 7 & 8 of **M/s Avon Services Production Agencies (P) Ltd.’s case (supra)**, are reproduced as under:-

“6. Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have

come to an affirmative conclusion on those matters (see State of Madras v. C. P. Sarathy, 1953 SCR 334).

7. *The contention, however, is that once the appropriate Government applies its mind to the question of referring an industrial dispute to the appropriate authority and declines to make a reference, it cannot subsequently change its mind and make the reference of the dispute unless there is some fresh or additional material before it. It was said that once an industrial dispute is raised and the Government declines to make a reference, the opposite party is entitled to act on the supposition that the dispute in question was not worth referring and such a dispute would no more be in existence between the employee 1) and the concerned employer and that the Government cannot spring a surprise by subsequently unilaterally making the reference without any fresh or additional material being brought to its notice. Section 10(1) enables the appropriate Government to make reference of all industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery the Government is apprised of the dispute is hardly relevant. Section 12 casts a duty upon the Conciliation officer to hold conciliation proceedings in respect of the industrial dispute that exists or is apprehended. It is mandatory for the Conciliation officer to so hold the conciliation proceedings where dispute relates to a public utility service and a strike notice has been served under 6. 22. The conciliation officer must try to promote a settlement between the parties and either he succeeds in bringing the parties to a settlement or fails in his attempt, he must submit a report to the appropriate Government, but this procedure for promoting settlement cannot come in the way of the appropriate Government making a reference even before such a report is received. The only requirement for taking action under s. 10(1) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradistinction to judicial or quasi-judicial function. Merely because the Government rejects a request for a reference or declines to make a reference. it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be a renewal of any A judicial or quasi-judicial order or determination. The industrial dispute may nonetheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under s. 10(1), nor is it precluded from making the reference o l the only ground that on an earlier occasion it had declined to make the reference. The expression "at any time" in s. 10(1) will clearly negative the contention that once the Government declines to make a reference the power to make a reference under s. 10(1) in respect of the same dispute gets exhausted. Such a construction would denude a very vital power conferred on the Government in the interest of industrial peace and harmony and it need not be whittled down by interpretative process. In Western India Match Co. Ltd., v. Western India Match Co. Workers Union & Ors.,(1) an identical contention was raised in respect of a reference made under s. 4(k)*

of the U.P. Industrial Disputes Act which is in pari materia with s. 10(1) of the Act. Negating this contention this Court observed as under:

"If the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute".

8. *It follows that the Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. But it was urged that the ratio of the decision would show that the Government must have some fresh material made available to it, subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference. It is not absolutely necessary that there ought to be some fresh material before the Government for reconsideration of its earlier decision. The Government may reconsider its decision on account of some new facts brought to its notice or for any other relevant consideration and such other relevant consideration may include the threat to industrial peace by the continued existence of the industrial dispute without any attempt at resolving it and that a reference would at least bring the parties to the talking table. A refusal of the appropriate Government to make a reference is not indicative of an exercise of power under s. 10(1), the exercise of the power would be a positive act of making a reference. Therefore, when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that does not denude the power. The power to make the reference remains intact and can be exercised if the material and relevant considerations for exercise of power are available; they being the continued existence of the dispute and the wisdom of referring it, in the larger interest of industrial peace and harmony. Refusal to make the reference does not tantamount to saying that the dispute, if it at all existed, stands resolved. On the contrary the refusal to make a reference not compelling the parties to come to a talking table or before a quasi-judicial Tribunal would further accentuate the feelings and a threat to direct action may become imminent and the Government may as well reconsider the decision and make the reference. It is, therefore, not possible to accept the submission that if the Government had on an earlier occasion declined to make a reference unless it be shown that there was some fresh or additional material before the Government the second reference would be incompetent. It has not been shown that the dispute had ceased to exist and the very existence of the dispute enables the Government to exercise the power under s. 10(1) and it has been rightly exercised. The view which we are taking is in accord with the decision of this Court in **Binny Ltd. v. Their Workmen (1972) 3***

SCR 518 wherein it was found that the Government had declined to make a reference of the dispute on two previous occasions on the basis of which it was contended that the reference was invalid. The contention was negated observing that the mere fact that on two previous occasions the Government had taken the view that no reference was called for does not entitle the Court to conclude that there could be no cause for a reference at a later date.”

7. Considering the cited judgment, this Court is of the opinion that once subject matter has already been dealt with by settling down the principle of law by the Hon’ble Apex Court, more than four decades back, same requires to be followed in the facts and circumstances of present case also.

Accordingly, there being no argument with the petitioner, writ petition stands **dismissed**.

8. At this stage, counsel for the petitioner – Society informs that the industrial dispute raised through demand notice is about 24-25 years old, therefore, a direction be issued to the Labour Court to decide the reference within some time bound manner.

Let the proceedings be completed by the Labour Court, Patiala, within the year 2024, firstly by making an endeavour to settle the dispute amicably by deciding the lump-sum amount of compensation.

A copy of this order be forwarded to the Labour Court, Patiala, for conducting further proceedings forthwith.

(SANJAY VASHISTH)
JUDGE

May 06, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/No

Whether Reportable: ✓ Yes/No