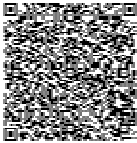


CWP-28515-2023 (O&M)
and other connected matters

2024:PHHC:143690



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

283 (28 cases)

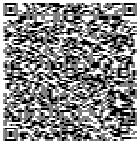
CWP-28515-2023 (O&M)
Date of Decision : 05.11.2024

BHARAT SHARMA
V/S
.... PETITIONER

PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA
AND ORS.
.... RESPONDENTS

Sr. No.	Case No. (O&M)	Parties Name
2.	CWP-28545-2023	DHIRAJ KUMAR SINGH V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS
3.	CWP-28549-2023	AVTAR SINGH V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS.
4.	CWP-28604-2023	MANAGER KUMAR V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS.
5.	CWP-28552-2023	HIRA LAL V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS
6.	CWP-28559-2023	VIJAY KUMAR SINGH V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS
7.	CWP-28567-2023	SARABJIT SINGH V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS.
8.	CWP-28589-2023	VIKAS SHARMA V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS
9.	CWP-28610-2023	MITHILESH KUMAR MISHRA V/S PRESIDING OFFICER GOVERNMENT INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
10.	CWP-28977-2023	SANJAY KUMAR V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS
11.	CWP-29411-2023	HARVINDER SHARMA V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND ORS.
12.	CWP-4407-2024	BIPIN KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
13.	CWP-4409-2024	ABHIMANYU TRIPATHI V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS

2024:PHHC:143690



14.	CWP-4419-2024	VARUN KUMAR SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND OTHERS
15.	CWP-4427-2024	KUNDAL SINGH V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL AND OTHERS
16.	CWP-4429-2024	RAVINDRA SINGH RAWAT V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
17.	CWP-4432-2024	SHIVA KANT DWIVEDI V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
18.	CWP-4433-2024	VINOD KUMAR SHARMA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
19.	CWP-4434-2024	VINDU KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
20.	CWP-4437-2024	PARMOD KUMARI TIWARI V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND OTHERS
21.	CWP-4440-2024	ANIL MALVIYA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND OTHERS
22.	CWP-4443-2024	BRAHMANAND V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
23.	CWP-4484-2024	RAJU SAINI V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND OTHERS
24.	CWP-4510-2024	ANIL CHOUBEY V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND OTHERS
25.	CWP-4513-2024	GOVIND YADAV V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND OTHERS
26.	CWP-4525-2024	RAJ KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS
27.	CWP-4827-2024	RADHEY SHYAM GODARA V/S PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL, LUDHIANA AND OTHERS
28.	CWP-4878-2024	RAJ KUMAR PAWADIYA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL LUDHIANA AND OTHERS

2024:PHHC:143690



CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Labh Singh Sandhu, Advocate and
Mr. Sudhakar, Advocate
for the petitioner (s).

Mr. G.S.Bhullar, AAG, Punjab.

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Manoj Dubey, Advocate
Mr. Kanwal Goyal, Advocate
Mr. Bijender Sharma, Advocate and
Ms. Ojaswini Gagneja, Advocate
for respondents No.4 to 6.

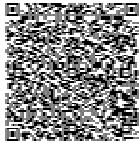
JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-28515-2023.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 15.11.2023 (Annexure P-6) whereby Industrial Tribunal, Ludhiana, has returned the reference and granted liberty to State Government to make fresh reference.

3. This is 2nd round of litigation. In the 1st round, M/s Jagran Prakashan Ltd. (respondent herein) approached this Court by way of CWP No.16275 of 2018 seeking setting aside of order dated 13.12.2016 whereby Assistant Labour Commissioner (for short 'ALC') referred two disputes between management and employees under Section 17(2) of The Working Journalists and Other Newspaper Employees (Conditions of

2024:PHHC:143690



Service) and Miscellaneous Provisions Act, 1955 (for short ‘1955 Act’) to Industrial Tribunal. This Court vide order dated 25.03.2019 set aside order dated 13.12.2016 whereby reference was made by ALC to Industrial Tribunal. The State was directed to consider making a reference of the disputes under Section 17(2) of the 1955 Act for adjudication before the Industrial Tribunal. The relevant extracts of the judgement dated 25.03.2019 are reproduced as below:

“8. I am afraid this view does not commend to reason as it would be contrary to the statutory framework of section 17 and the stark difference of fields covered by the two sub-sections of Section 17 and is not the correct interpretation of the law to justify the order dated 13.12.2016 which delegates power on the Assistant Labour Commissioner only under Section 17(1) but not Section 17 (2) of the Act. I would not accept the argument of there being any ambiguity that such power under section 17(1) can be applied or read in Section 17(2) without there being a statutory basis for the broad statement.

X X X X

11. In view of the above discussion and the legal position in the Act, I have no hesitation in declaring the order dated 13.12.2016 passed by the ALC illegal and without jurisdiction.

12. Accordingly, these petitions are allowed and the impugned reference orders 13.12.2016 are quashed. State is directed to consider making a reference of the disputes under 17(2) of the Act for adjudication before the appropriate Labour Court. State Government

2024:PHHC:143690



would consider the matter within a month of receiving the certified copy of this order.”

4. Before proceeding further, it would be relevant to notice that the petitioner is an ex-employee of M/s Jagran Prakashan Ltd.-respondents No.4 to 6 (hereinafter referred as ‘respondent’). The respondent is engaged in the business of printing and publication of newspapers. The Government of India in terms of 1955 Act constituted a Board known as Majithia Wage Board. The said Board made its recommendations which were accepted and implemented by Government. The petitioner and his colleagues approached ALC claiming that they are not paid as per Majithia Wage Board. The act of respondent amounts to violation of 1955 Act as well as recommendations of Majithia Wage Board. ALC referred the dispute to Industrial Tribunal in terms of Section 17(2) of 1955 Act. The reference dated 13.12.2016 made by ALC reads as :

“Order

Whereas the Govt. of Punjab, Department of Labour, Chandigarh has notified the Asstt. Labour Commissioner, Jalandhar as specified Authority vide its notification number 17/02/2016-41/194 dated 30.6.2016 to exercise the powers under section 17 (1) of the Working Journalist & Other News Papers Employees (Condition of Service) and Misc. Provisions Act 1955 to dispose of the claims.

The Govt. of India, Ministry of Labour and Employment New Delhi has accepted the Majithia Wage Board recommendations and notified vide its order SO No. 2532(E) dt. 11.11.2011. These recommendation were to be implemented w.e.f.

2024:PHHC:143690



1.7.2010 and allowance has been allowed from the date of notification i.e. 11.11.2011. The arrears were to be paid in 3 install merits as per rule 21 of this notification.

This order of revision of wage was not implemented by M/s Jagran Parkashan Ltd. C 120 Focal Point, Jalandhar. The workers of the establishment has filed the claim of arrear of wages as per Majithia Wage Board.

Sh Tulsi Ram S/o Sh. RajDhari who was working as Sr. Unit Attendent with M/s Jagran Parkashan Ltd. C 120 Focal Point, Jalandhar has claimed wage w.e.f. 01/07/2010 to 31/12/2015 for Rs. 10,15,747/- The Management of M/s Jagran Parkashan Ltd. C 120 Focal Point, Jalandhar has filed the objection and contested the claim of the workman. As per section 17 (2) of the Working Journalist & other News Papers Employees (Condition of Service) and Misc. Provisions Act 1955 if there is any dispute regarding the amount than the Labour Court can adjudicate the matter.

In Exercise of powers vested in me, I refer the dispute to The Industrial Tribunal- cum-Labour Court Jalandhar to adjudicate the claim/as per section 17 (2) of Working Journalist Act 1955.

1. Whether the establishment of M/s Jagran Parkashan Ltd. C 120 Focal Point, Jalandhar belongs which Categories as per the provision of section 2 (d) of Working Journalist & other News Papers Employees (Condition of Service) and Misc. Provisions Act 1955.

2024:PHHC:143690



2. Whether the workman is entitled to claimed wages if not the exact amount of wages

*Asstt. Labour Commissioner
Jalandhar”*

5. The aforesaid reference came to be set aside by this Court vide judgment dated 25.03.2019. The respondent No.3-Deputy Secretary of Department of Labour and Employment made a fresh reference dated 24.05.2019 to the Industrial Tribunal. The reference made by Deputy Secretary Labour is reproduced as below:

*“Subject:- Claim cases of wages of workmen of M/s.
Jagran Parkashan Ltd., Jalandhar*

Reference on the subject noted above.

The documents of 35 workmen (mentioned in list attached as annexure 'A') relating to claim of amounts of wages & arrears are sent herewith in original, in compliance with the order issued on 25.3.2019 by the Hon'ble Punjab & Haryana High Court in CWP No. 16275 of 2018.

You are requested to decide:-

- (i) the category to which M/s Jagran Parkashan Ltd. C 120, Focal Point, Jalandhar and Danik Baskar, Puda Complex, Ladowali Road, Jalandhar relates under provision of Section 2(d) of Working Journalist & other News Papers Employee (Condition of Service and Misc. Provisions Act, 1955.*
- (ii) whether these workmen are entitled for wages in accordance with the recommendations of Majithia Wage Board, if not, then the exact amount of wages & arrears.*

2024:PHHC:143690



The cases of the concerned workmen be disposed of within the time limit fixed by the Hon'ble High Court without unnecessary adjournments.”

6. The matter came up for consideration before the Industrial Tribunal, Ludhiana which vide impugned order dated 15.11.2023 has held that the High Court had directed the State Government to reconsider the matter which was not reconsidered. The reference is not maintainable as the same has not been made by the State Government as per directions of High Court. The Industrial Tribunal has further held that reference was made without hearing management and it is silent whether it was made under Section 17(2) or 17(1) of 1955 Act. The relevant extracts of the order dated 15.11.2023 are reproduced as below:

13. In this report, it is categorical directed that as per the order of the Hon'ble High Court, the State Govt. was to reconsider the matter of the workmen as claimed by them. However, as per the reference made by the State Govt. to this Tribunal there is nothing mentioned about the fact that whether the matter was reconsidered by the State Govt. or not? Department of Labour, Govt. of Punjab directly written to this Tribunal by referring the reference petition of the workmen and in the reference order, it is not mentioned that there was any dispute between the workmen or the management. The reference is totally silent whether case of the workmen was reconsidered as per the direction of the Hon'ble High Court or not? It is also clear from this report that other party was not called for the purpose of reconsideration by the Hon'ble

2024:PHHC:143690



High Court. The reference is also totally silent whether it was made by the Govt. of Punjab, Department of Labour, Chandigarh under Section 17(2) or under Section 17(1) of the Act, 1955?

14. A/R for the respondents/workmen argued that it can be presumed that the reference is made by the State Govt under Section 17(2) of the Act, 1955 and this argument has been controverted by Shri Anil Arora by arguing the matter that State Govt. never reconsidered the matter of the workmen as per the directions of the Hon'ble High Court despite confidential report of the Assistant Labour Commissioner. He also argued in this way that this reference is not maintainable and his application be allowed.

15. Now the question before this Tribunal is only that whether this reference was made by the State Govt. as per the directions of the Hon'ble High Court or not? and the answer will definitely be negative.

16. Accordingly, in view of discussion above, I find that the Hon'ble High Court had directed the State Govt. to reconsider the matter, which was not reconsidered by the State Govt. Hence, the present application moved by the management is allowed. This Tribunal treated it as preliminary issue and it is decided that this reference is not maintainable as the same has not been made by the State Govt. as per the directions of the Hon'ble High Court given by it in the Civil Writ Petition Jagran Parkashan

2024:PHHC:143690



Limited (supra). As such, the preset reference is dismissed on the above said terms.

17. However, the workmen are at liberty to approach the State Govt. under Section 17(2) of the Act, 1955 and not under Section 17(1) of the Act, 1955. Thereafter, the State Govt. is at liberty to call the management, if there will be any dispute regarding the due amount of the workmen toward the management. The State Govt. is again at liberty to refer the matter to this Tribunal after obeying the orders 25.3.2019 passed by the Hon'ble High Court in the Civil Writ Petition Jagran Parkashan Limited (supra). No order as to costs. File be consigned to record room.”

7. Hence the instant petition by workmen.

8. Mr. Sandhu submits that order of reference made by State Government was not a judicial or quasi-judicial order whereas it was purely an administrative order. It is a settled proposition of law that Government while making reference under Section 10 of Industrial Disputes Act, 1947 (for short ‘ID Act’) or Section 17 of 1955 Act is not required to grant opportunity of hearing to management, thus, findings of Tribunal are totally contrary to settled law. This Court while setting aside earlier reference made it clear that State Government would make reference under Section 17(2) of 1955 Act. In the reference made by State Government, neither sub-section (1) nor sub-section (2) was quoted, thus, from the scheme of Section 17 of 1955 Act, it is evident that reference was under sub-section (2) of Section 17 of 1955 Act. It is further settled law that no order can be questioned just because relevant

2024:PHHC:143690



provision is not quoted or incorrect provision is quoted if correct substance/narration is mentioned.

9. This Court vide judgment dated 25.03.2019 passed in CWP No.16275 of 2018 had directed the State Government to consider the matter for reference under Section 17(2) of Section 17 of 1955 Act. There was no direction to reconsider the matter and the Industrial Tribunal on its own substituted the word 'consider' by 'reconsider'.

10. In support of his contentions, Mr. Sandhu relied upon Supreme Court judgments in Sultan Singh vs. State of Haryana, AIR 1996 SC 1007, Bongalgaon Refinery vs. Samijuddin Ahmed, AIR 2001 SC 3507 and Samarjit Ghosh vs. Benett Coleman, SCC 1987 (3) 507, and Madhya Pradesh High Court in Rajasthan Patrika Pvt. Ltd. vs. State of Madhya Pradesh, 2019 SCC OnLine MP 7001.

11. Per contra, Mr. Sanjay Kaushal, Sr. Advocate submits that the State Government made reference without application of mind. The State Government may not be required to grant opportunity of hearing to management, however, is bound to find out whether any dispute exists and whether reference should be made or not. The Government made reference with respect to a unit at Jalandhar whereas petitioners were working at Ludhiana Unit. Both the units are independent and status of Jalandhar cannot be considered for determining status of unit at Ludhiana.

12. I have heard the arguments of counsel for the parties and perused the record.

13. A conspectus of impugned order reveals that the Labour



Court has returned the reference to State Government on following counts:

- (i) The management was not heard prior to making reference;
- (ii) The State Government has not reconsidered the matter in terms of judgment of High Court;
- (iii) Reference is not clear whether it was made under sub-section (1) or sub-section (2) of Section 17 of 1955 Act.

14. This Court vide judgment dated 25.03.2019 allowed writ petition of management assailing reference order dated 13.12.2016 made by ALC to Industrial Tribunal. While setting aside reference order, the State was directed to consider making a reference of the dispute under Section 17(2) of the 1955 Act for adjudication before appropriate Labour Court. The State Government made a reference in terms of judgment dated 25.03.2019 passed by this Court. As the reference was made in terms of judgment of this Court, inescapable conclusion was that reference was made under Section 17(2) of 1955 Act. Besides that, it needs to be noted that no reference to Labour Court or Industrial Tribunal is made under Section 17(1) of 1955 Act. Reference is made only under sub-section (2) of Section 17 of 1955 Act, thus, there was no reason to conclude that it was not clear whether reference was made under sub-section (1) or sub-section (2) of Section 17 of 1955 Act. For the ready reference, Section 17 of 1955 Act is reproduced as below :

*“17. Recovery of money due from an employer.--(1)
Where any amount is due under this Act to a
newspaper employee from an employer, the newspaper
employee himself, or any person authorised by him in*

2024:PHHC:143690



writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).”

15. The Supreme Court in **Samarjit Ghosh’s case (supra)** has considered scope of Section 17 of 1955 Act. The Court has held that all the provisions of Section 17 of 1955 Act constitute a single scheme. The relevant extracts of the judgment are reproduced as below:

2024:PHHC:143690



6. *When all the provisions of Section 17 are considered together it is apparent that they constitute a single scheme. In simple terms the scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words the State Government before whom the application for recovery is made is the State Government which will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount.”*

16. A Division Bench of Madhya Pradesh High Court in **Rajasthan Patrika Pvt.Ltd.’s case (supra)** following afore-cited judgment of Supreme Court has formed the similar opinion. The relevant extracts of the judgment of Madhya Pradesh High Court are reproduced

2024:PHHC:143690



as below:

11. In the case of Kasturi (supra) the Apex Court considered the unamended provision of Section 17 of the Act of 1955. In the unamended Section 17, there was no provision for making reference to the labour Court for adjudication of the dispute. In this backdrop, in Kasturi (supra) certain findings were given, on which heavy reliance is placed by learned senior counsel. After the amendment in Section 17 aforesaid, the matter again travelled to Supreme Court in (1987) 3 SCC 507, [Samarjit Ghosh v. Bennett Coleman & Company]. The Apex Court expressed its view as under:

“6. When all the provisions of Section 17 are considered together it is apparent that they constitute a single scheme. In simple terms the scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the

2024:PHHC:143690



reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words the State Government before whom the application for recovery is made is the State Government which will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount.”

[Emphasis Supplied]

A plain reading of this para makes it clear like noon day that Section 17 is a Code in itself. If upon considering the claim application of the employee and its response by the employer, the question arises regarding the amount due the State Government can call for an adjudication of the dispute by referring the question to a labour Court.

17. In view of afore-cited judgments, it is evident that Section 17 of 1955 Act constitutes a single scheme. In case where amount is already quantified, steps for recovery are initiated and no reference is made to Labour Court or Industrial Tribunal. In case of absence of quantified demand, meaning thereby disputed demand, a reference is made to Labour Court or Industrial Tribunal constituted under ID Act or under any corresponding law relating to investigation or settlement of industrial disputes.

18. In the instant case, the reference was made by State Government to Industrial Tribunal, thus, there was no doubt that reference was made under Section 17(2) of 1955 Act.

19. The Tribunal has held that management was required to be

2024:PHHC:143690



heard before making a reference. The Supreme Court in **Sultan Singh 's case (supra)** while advertng to Section 10 of ID Act has held that an appropriate Government is required to record reasons where reference is declined, and there is no need to record reasons and further grant opportunity of hearing to management while making a reference. The relevant extracts of the judgment in **Sultan Singh 's case (supra)** read as:

"4. A conjoint reading, therefore, would yield to the conclusion that on making an application for reference, it would be open to the State Government to form an opinion whether industrial dispute exists or is apprehended and then either to make a reference to the appropriate authorities or refuse to make the reference. Only on rejection thereof, the order needs to be communicated to the applicant. Nonetheless the order is only an administrative order and not a quasi-judicial order. When it rejects, it records reasons as indicated in sub-section (5) of Section 12 of the Act. The appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on record. Being an administrative order no lis is involved. Thereby there is no need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference. Sub-section (5) of Section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference under Section 10(1). It enjoins to record reasons only

2024:PHHC:143690



when it refuses to make a reference.”

20. In the case in hand, the reference was not made under Section 10 of ID Act whereas it was made under Section 17(2) of 1955 Act. The order passed by the State Government under Section 17(2) of 1955 Act is neither judicial or nor quasi-judicial order. It is purely an administrative order. The State Government is not bound to grant opportunity of hearing to management before making a reference to Industrial Tribunal, however, it needs to be noticed that in the absence of complete material on record, it is difficult for the Government to form an opinion as to existence of claim of the workman. The opinion cannot be formed on the basis of few documents submitted by the workmen. It is apt to notice here that reference under Section 10 of ID Act is preceded by conciliation proceedings before labour authorities whereas there is no such provision under 1955 Act. Though, the State Government is not required to grant opportunity of hearing to management yet it would be appropriate if material already on record is considered before making reference. It is apt to notice that qua instant litigation, the management at the first instance filed writ petition before this Court and thereafter filed application seeking rejection of reference, thus, sufficient material is on record. It is made clear that opinion of State Government would be of subjective satisfaction and it is not required to record reasons and advance findings qua documents of management which are available on record.

21. The State Government by reference dated 24.05.2019 requested the Labour Court to determine category of Jalandhar Unit of

2024:PHHC:143690



respondent-management in terms of Section 2(d) of 1955 Act. The petitioners were working with Ludhiana Unit, thus, financial records of Jalandhar Unit could not be considered to determine category of Ludhiana Unit. There was apparent intentional or unintentional mistake in the reference order dated 25.05.2019. The petitioners were working with Ludhiana Unit, thus, status of Ludhiana Unit was required to be considered.

22. In the wake of above discussion and findings, the writ petitions are hereby disposed of with a direction to State Government to reconsider claim of petitioners and make appropriate reference to Industrial Tribunal within 30 days from today. The Industrial Tribunal shall proceed with reference without entering into technicalities.

23. Pending miscellaneous application (s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

05.11.2024
anju

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