

Hari Chand Vs. Government of Nct of Delhi and Another

Hari Chand Vs. Government of Nct of Delhi and Another

SooperKanoon Citation : sooperkanoon.com/687198

Court : Delhi

Decided On : Apr-27-2000

Reported in : 2000VAD(Delhi)220; 86(2000)DLT590

Judge : A.K. Sikri, J.

Acts : Industrial Dispute Act, 1947 - Sections 10

Appeal No. : Civil Writ Petition No. 85 of 1999

Appellant : Hari Chand

Respondent : Government of Nct of Delhi and Another

Advocate for Def. : Mr. S.N. Bhandari Adv.

Advocate for Pet/Ap. : Mr. Ashok Aggarwal and; Ms. Ritu Jain, Advs

Judgement :

ORDER

A.K. Sikri, J.

1. Petitioner was employed by respondent No. 2 - M/s. Ashok Hotel as painter on daily wage basis w.e.f. 1st May, 1971. His services were terminated on 1st February, 1978. He raised industrial dispute challenging his termination which was referred for adjudication to Labour Court IV. Labour Court gave award dated 22nd

April, 1993 holding that termination of petitioner's service were illegal and unjustified and he was entitled to be reinstated with full back wages and continuity of service. Pursuant to this award petitioner was allowed to join the duties on 6th July, 1995 as 'Technical Grade-III' in the pay scale of Rs. 1050-1425/-. On 20th September, 1994 petitioner protested against the grant of this pay scale and demanded the pay scale of Rs. 1100-1640/- w.e.f. 17th May, 1998. In January 1995 he even lodged a complaint with Labour Commissioner against the Management that it was committing unfair labour practice. It was followed with many representations. Ultimately on 21st May, 1996, just ten days before the petitioner was to retire from service i.e. on 31st May, 1996, petitioner filed statement of claim before the Conciliation Officer raising industrial dispute claiming the aforesaid pay scale of Rs. 1100/- 1640/-. Conciliation proceedings ended in failure. Failure report was submitted and ultimately respondent no.1 passed impugned order dated 22nd December, 1997 declining to make reference by giving the following reasons:-

'Workman Shri hari Chand has retired on 31.5.96. Undated claim was received in this office in May 1996. Cause of action admittedly arose on 17.5.78. The Claim which has been filed when the workman is on the verge of retirement that too 18 years after cause of action arose is highly belated and is, therefore, not fit for reference.'

2. One year after the aforesaid rejection, petitioner submitted review petition dated 12th February, 1998 requesting respondent no.1 to review its order dated 22nd December, 1997. This review was also dismissed by impugned order dated 1st September, 1998. Relevant portion of this order reads as under:-

'It is an admitted fact that the workman retired on 31.5.96 and has received all his retirement benefits. Though the workman did raise a dispute regarding illegal termination of his services but did not raise the issue of promotion as such. The workman rejoined on 6.7.94 and had all the time to raise the dispute but he chose to do on the verge of his retirement, that is barely 10 days before his superannuation. Even the demand notice was sent on 2.5.96. After considering all the facts and circumstances of the case, I am of the considered opinion that the

dispute does not merit adjudication. The review petition does not succeed and the same is, thereby, dismissed.' illegal termination of his services but dismissed.

3. Petitioner filed this petition challenging order dated 22nd December, 1997 and 1st September, 1998.

4. The aforesaid facts show that the reference is mainly rejected on the ground that the dispute raised by the petitioner workman was highly belated and the issue of pay scale/promotion was raised by the petitioner when he was on the verge of his retirement i.e. barely ten days before his superannuation. Although, pursuant to the award rendered by the Labour Court holding his termination as illegal he had rejoined his duties almost two years ago.

5. Petitioner retired from service on 31st May, 1996 i.e. almost four years ago. No useful purpose would be served directing the respondent to reconsider the matter or refer the industrial dispute at this belated stage with regard to the pay scale/promotion of the petitioner relating to the period when he was in service. This is not a fit case where this Court should interfere with the impugned orders in exercise of its jurisdiction under Article 226 of the Constitution of India. It is well established that the function of the is an 'appropriate Government' while making or refusing to make reference discharges administrative function and 'appropriate Government' is to form an opinion that industrial dispute exists or is apprehended, before it makes the reference. In view of the reasons given by the 'appropriate Government' in refusing to make reference, it cannot be said that the 'appropriate Government' acted illegally or committed any material irregularity. It was governed by relevant facts and came to the conclusion that it was not a fit case for reference. One can refer to judgment of the apex Court in the case of Secretary, Indian Tea Association Vs . Ajit Kumar Barat and others : (2000)ILLJ809SC . In that case 'appropriate Government' refused to make reference on the ground that the concerned employee who had raised the dispute was not 'workman' within the meaning of Section 2(s) of the Act. While doing so government considered the salary and allowances drawn by the employee as well as the nature of work performed by him including his power to sanction expenses incurred by his Office. The concerned employee (respondent in the aforesaid case) filed writ petition

against the Order of the 'appropriate Government' refusing to make reference and High Court in that writ petition directed the government to make the reference as to whether he was a workman. Appeal filed by the appellant was also dismissed and in these circumstances the appellant preferred Special Leave Petition and that is how the matter came up for consideration before the Supreme Court. Granting the leave and ultimately allowing the appeal of the appellant, Supreme Court set aside the judgment of the High Court and upheld the order of the Government refusing to make reference. Relying upon its earlier judgment in the case of State of Madras v. C.P. Sarthy (supra), Prem Kakkar Vs . State of Haryana : [1976]3SCR1010 and Sultan Singh Vs . State of Haryana : (1996)ILLJ879SC , the Court observed that the order u/S. 10 of the Act was an administrative order and the government was entitled to go into the question whether industrial dispute exists or is apprehended and it will be only subjective satisfaction on the basis of material on records and being an administrative order no lis is involved. The position in law was summarised as under:-

- '1. The appropriate Government would not be justified in making a reference under S. 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;
2. The order of the appropriate Government making a reference under S. 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;
3. An order made by the appropriate government under S. 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;
4. If it appears from the reasons given that the appropriate government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.'
6. Judging the present case from this angle, it would be seen that the impugned order made by respondent no.1 is legal and valid.
7. On the basis of the facts on record when the dispute was raised belatedly and that too when the petitioner was at the verge of his retirement the 'appropriate Government' rightly rejected the reference as it could be said that no industrial dispute 'exist' and it was not a fit case for reference. Writ petition is accordingly dismissed. Rule stands discharged.
8. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com