Before I. S. Tiwana, J.

EMPLOYEES OF LAL JHANDHA, N.F.L. MAZDOOR UNION, PANIPAT and others,—*Petitioners.*

versus

THE STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 3036 *of* 1980.

January 25, 1983.

Industrial Disputes Act (XIV of 1947)—*Sections* 10 *and* 12—*Contract Labour (Regulation and Abolition) Act (XXXVII of* 1970)—*Sections* 3 *and* 4—*Demand notice from workmen received by the Conciliation Officer seeking a reference under section* 10—*Such officer disposing of the demand on the ground that it does not fall under the Industrial Disputes Act—Conciliation Officer—Whether had jurisdiction to finally dispose of the matter at his own level—Workmen claiming to be the employees of the management and not of the contractor—Management alleging otherwise—Conciliation Officer directing workman to seek relief from the competent authorities under the Contract Labour (Regulation and Abolition) Act—Conciliation Officer—Whether should have decided the matter only on the pleas of the workmen claimants.*

Held, that the Contract Labour (Regulation and Abolition) Act, 1970 takes away the power of the Government which it enjoyed previously under section 10 of the Industrial Disputes Act, 1947 to refer disputes relating to Contract Labour to the Industrial Tribunals. Instead, the Government can now, if they so desire, apply the provision of the former Act to such an establishment or prohibit the contract labour in any process of such establishment. However, where the workmen assert that their appointment through contractors is only a ruse sought to be played by the management on the Industrial Laws and that they are in fact the employees of the management and not of the contractors, the Labour and Conciliation Officer had to determine the jurisdiction after looking to the pleas raised by the workmen without looking to the defence which was sought to be raised by the opposite side. The Conciliation Officer was not required to advert to the stand of the management to find out as to whether he had jurisdiction in the matter or not. If the assertions made by the workmen are accepted as factually correct, then the Labour-cum-Conciliation Officer obviously had the jurisdiction to go into the matter. It is beyond dispute that in order to find out its jurisdiction a Court and even all other Tribunals have only to look to the pleas raised by the plaintiff or the claimant. In order to judge whether the case pleaded falls within the jurisdiction of the Court or the Tribunal, it has not to look to the defence which is sought to be pleaded or raised by the other side. In such a situation, the Conciliation Officer could only report to the Government in terms of sub-sections (3) and (4) of section 12 of the Industrial

Disputes Act as to whether the parties to the dispute had arrived at a settlement or not and it was then for the Government to decide whether or not to make a reference under section 10 of the said Act. The Conciliation Officer had no jurisdiction to finally dispose of the matter at his own level and as such, the order passed by him has to be quashed.

(Paras 3 and 4).

V. K. Bali, Advocate, *for the Petitioner.*

H. L. Sibal Senior Advocate with T. S. Doabia, Advocate, *for respondent No. 3.*

JUDGMENT

I. S. Tiwana, J. (Oral)

(1) The petitioner union and 195 of its principal workers impugned the order of the Labour and Conciliation Officer, Panipat dated July 30, 1980 (Annexure P.3) whereby he declined to entertain the reference made to him and directed the petitioners to agitate their claim under the Contract Labour (Regulation and Abolition) Act, 1970 (for short, the Act). Since the entire controversy revolves around this order of the Labour and Conciliation Officer, I deem it necessary to refer to the same *in extenso.* It reads thus:—

> "I draw your attention to your Demand Note dated 26th June, 1980 which was received by this office on 1st of July, 1980.
>
> The Demand Letter (not) filed by you raises only one question which is that the workers working in different sections should be made the employees (workers) of National Fertilizers Limited instead of a Contractor. As you have stated some of the workers in canteen are working under a contract and workers in Cleaning Department, Gardens etc. have been employed by a Contractor. The matter comes under Equal Remuneration Act. The Management has informed me that the matter is under consideration of State Advisory Board, Haryana. This Board has been made under Contract Labour Act and therefore, in this situation, under this law, this Office cannot decide on your Demand Note. Whatever decision the Advisory Board shall take the Government would give decision thereon. Your demand, therefore, does not come under the Industrial Disputes Act and therefore, the same is filed."

The case of the petitioners is that out of about 800 workers in the employment of respondent No. 3, National Fertilizers Ltd., the petitioners and few others are working in its different sections, such as, Bagging, Canteen, Sweeping, Coal Handling, Horticulture and Teachers etc. According to them the respondent concern, with a view to avoid compliance of the industrial laws and more particularly of the Industrial Disputes Act, 1947, has shown their employment through various contractors. It is only a device to harm their interest. To sustain this factual averment, they have pointed out a number of circumstances, including (i) the petitioners' services have been continued inspite of the change of various contractors and (ii), the services rendered by the petitioners are not only essential but are entirely for the benefit of the respondent-management and not of any contractors. In a nutshell, the whole case of theirs is that the respondent concern, only to play a ruse on the provisions of the relevant law, has resorted to this method of showing their employment through various contractors. Since the petitioners raised an industrial dispute by asserting themeselves to be workers of the respondent concern, a reference was made to the Labour and Conciliation Officer, Panipat which led to the passing of the impugned order.

Mr. Bali, learned counsel for the petitioners, now contends that firstly, the Labour and Concilation Officer has no jurisdiction to finally decide the matter between the employer and the workers at his own level and secondly, he has passed the impugned order on the basis of absolutely non-existent facts with regard to the pendency of any dispute between the employer and the workers before the Advisory Board constituted under the Act. It deserves to be mentioned here that the words "Equal Remuneration Act" occuring in the second part of the impugned order have been substituted for the Act through a later order (Annexure R. 4).

(2) After hearing the learned counsel for the parties and giving my thoughtful consideration to the entire matter, I find that the impugned order cannot possibly be sustained. So far as the assertion of the petitioner that the Labour and Conciliation Officer has only assumed some facts and actually no matter was pending with the State Advisory Board at the time of the passing of the order is concerned, the same has not been denied by the respondent-management. The only plea raised by the respondent in this behalf is that the petitioners may well seek their remedy under that Act. Thus the order is apparently base on non-existent facts.

(3) Further from a bare reading of the provisions of section 12 of the Industrial Disputes Act, I feel satisfied that the Labour and Conciliation Officer had no jurisdiction to finally dispose of the matter at his own level. In terms of sub-sections (3) and (4) of this section he could only report to the appropriate Government as to whether the parties to the dispute had arrived at a settlement or not.

(4) Mr. Doabia, learned counsel for the respondent-management, however, contends that in the given facts of this case, the Labour and Conciliation Officer had no jurisdiction whatsoever to entertain the dispute and to that extent his order is flawless and deserves to be sustained. His plea is that it is the admitted case of the petitioners that they had been employed through the contractors and in that situation they can neither make any grouse nor can enforce their rights under the Industrial Disputes Act. The learned counsel further maintains that unless the dispute is covered by this Act, the Labour and Conciliation Officer has no jurisdiction in the matter. In support of this stand of his, he seeks reliance on *Management Burmah Shell Oil Storage and Distribution Co. of India Ltd., Madras* v. *The Industrial Tribunal, Andhra Pradesh and others* (1), wherein it is observed that "every dispute therefore relating to contract labour must have to be tackled only under the provisions of the Act [Contract Labour (Regulation and Abolition) Act, 1970] and not under the general law. The Act therefore takes away the power of the Government which it enjoyed previously under section 10 of the Industrial Disputes Act to refer disputes relating to contract labour to the Industrial Tribunals. Instead, the Government can now, if they so desire, apply the provisions of the Act to such an establishment or prohibit the contract labour in any process of such establishment." The learned counsel may be right so far as the bare statement of the legal proposition is concerned. While making these submissions the learned counsel completely forgets that in the case in hand the case pleaded by the petitioners is that this alleged appointment of theirs through contractors is only a ruse sought to be played by the management on the industrial laws. According to their assertions, they are in fact employees of the management and not of contractors. It is beyond dispute that in order to find out its jurisdiction a Court, and to my mind, even all other Tribunals have only to look to the pleas raised by the plaintiff or the claimant. In order to judge whether the case

(1) 1975 Lab. I. C. 165.

pleaded falls within the jurisdiction of the Court or the Tribunal, it has not to look to the defence which is sought to be pleaded or raised by the other side. Therefore, the Labour and Conciliation Officer at the stage of passing of the impugned order had not at all to advert to the stand of the respondent-management to find out as to whether he had the jurisdiction in the matter or not. It is not disputed that if the assertions made by the petitioners in the reference, Annexure P. 2 are to be accepted as factually correct, then the Labour and Conciliation Officer obviously had the jurisdiction to go into the matter. In that situation he could only report to the Government in terms of sub-sections (3) and (4) of section 12 of the Industrial Disputes Act as to whether the parties to the dispute had arrived at a settlement or not. It was then for the Government to decide whether to make a reference under section 10 or not.

(5) For the reasons recorded above, I set aside the impugned order Annexure P. 3 and direct the Labour and Conciliation Officer to proceed in the matter afresh in accordance with law and the observations made above. The parties through their counsel are directed to appear before him on February 17, 1983. The petitioners are also held entitled to Rs. 300 as costs of this litigation payable by respondent No. 3.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & S. C. Mital, J.J.

MANJIT SINGH and others,—*Petitioners.*

versus

DARSHAN SINGH and others,—*Respondents.*

Criminal Original Petition No. 15 *of* 1982.

May 20, 1983.

Contempt of Courts Act (LXX of 1971)—Sections 15 *and* 20—*Period of limitation—Determination thereof in the matter of contempt proceedings*—Terminus a quo *and* terminus ad quem—*Initiation of such proceedings—Meaning of.*