

Bharat Textile Mills v. Punjab State and others (G. C. Mital, J.)

(17) As a result to the aforesaid discussion, this appeal is partially allowed and the husband-respondent is directed to hand over the afore-mentioned articles, as suggested by the learned counsel, to the wife-appellant for her user forthwith in the condition as they exist today and not to indulge in destruction, substitution or minimisation thereof by any act or omission on his part. This direction be taken as an addendum to the main decree of divorce. There would be no costs in this petition of appeal.

H.S.B.

Before B. S. Dhillon and G. C. Mital, JJ.

BHARAT TEXTILE MILLS,—Petitioner.

versus

PUNJAB STATE and others,—Respondents.

Civil Writ No. 1321 of 1970.

May 16, 1980.

Industrial Disputes Act (XIV of 1947)—Sections 2-A, 10, 12(5) and 39—Powers of State Government under sections 10 and 12(5) delegated to the Labour Commissioner—Labour Commissioner in exercise of such delegated powers referring an individual dispute to a Labour Court—Notification issued in the name of the President but authenticated by the Labour Commissioner—Such notification—Whether invalid.

Held, that where the Labour Commissioner has been delegated under section 39 of the Industrial Disputes Act, 1947 the powers of the State Government to issue a notification under sections 10 and 12(5) of the Act, the mere fact that the Labour Commissioner issued the said notification making the reference to the Labour Court in the name of the President of India would not make any difference in law as such a mistake on the part of the Labour Commissioner was not of substance and was merely of form and, therefore, would not effect the validity of the notification referring the dispute to the Labour Court. The Labour Commissioner was undoubtedly competent to refer the dispute to the Labour Court and it makes no difference if the notification under section 10 of the Act though signed by him

purports to be in the name of the President. At the most, it is merely a technical or a formal defect not affecting the competence of the Labour Commissioner or jurisdiction of the Labour Court or the validity of the reference. (Paras 4 and 5).

Municipal Committee Patiala vs. State of Punjab and others,
1969 Current Law Journal, 1000 **OVERRULED.**

Petition Under Articles 226 & 227 of the Constitution of India, praying that a writ in the nature of Certiorari be issued quashing the impugned order dated 21st August, 1969 passed by respondent No. 2.

It is also prayed that any other writ, order or direction may be issued which this Hon'ble Court may deem fit and appropriate in the circumstances of the present case and to which the petitioner may be deemed entitled.

Costs of this petition may also be awarded to the petitioner.

It is further prayed that pending the final disposal of the above-mentioned writ petition in this Hon'ble Court, the implementation of the Award be stayed.

H. R. Bansal, Advocate, for the Petitioners.

B. N. Sehgal, for Respondent 5 & G. S. Boparai A.A.G. Punjab for Respondent 1.

JUDGMENT

Gokal Chand Mital, J.

(1) While sitting singly, two points were raised before me by the counsel for the petitioner, one of which was decided against the petitioner in view of a Bench decision of this court in *Algu Ram v. The State of Punjab and others* (1). On the other point, I had noticed conflict in two Single Bench decisions of this Court and referred the following question for decision of the Division Bench:—

“Whether the determination of an industrial dispute by a Labour Court on a reference made and signed by the Labour Commissioner, although issued in the name of President of India or the Governor of the State, when he had been vested with the powers exercisable under

(1) 1977 P.L.R. 283.

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sections 10 and 12(5) of the Act in relation to industrial disputes falling under section 2-A of the Act, by the State Government in Labour Department,—vide notification dated 11th August, 1967, would be void and without jurisdiction liable to be quashed under Article 226 of Constitution of India.”

That is how this case has been placed before us.

(2) The Government of Punjab, in exercise of its power under section 39 of the Industrial Disputes Act (hereinafter called the ‘Act’) issued notification dated 11th August, 1967, empowering the labour Commissioner to exercise the powers of the State Government under section 10 and 12(5) of the Act in relation to an individual dispute falling under section 2-A of the Act. In pursuance of the aforesaid notification, the Labour Commissioner, Punjab, in exercise of his delegated powers under section 10(1)(c) of the Act, issued notification dated 7th November, 1968, for referring the following individual dispute for determination by Labour Court, Jullundur:—

“Whether the termination of services of Shri Atma Ram is justified and in order? If not, to what relief/exact amount of compensation is he entitled ”

The Labour Court, by award dated 21st August, 1969, found that the termination of services of Atma Ram was arbitrary and illegal and ordered his reinstatement with continuity of service and full back-wages. Against the aforesaid award, the Management has come up in petition under Articles 226 and 227 of the Constitution of India, to this Court.

(3) Under the point, which has been referred before us, it has been urged by the learned counsel for the petitioner that a reading of the notification for reference, which was signed by the Labour Commissioner, Punjab, as a delegate of the State Government, (a copy of which has been annexed as Annexure A-2 to the writ petition), would show that it was issued in the name of the President of India instead of his own name and, therefore, the reference itself was bad and could not be adjudicated upon by the Labour Court; with the result that its award is also without jurisdiction.

In support of the argument, reliance is placed on a Single Bench decision of B. R. Tuli, J., in *Municipal Committee, Patiala v. The State of Punjab and others* (2), and particularly, on the following observations:—

“This notification does not authorise the Labour Commissioner to authenticate a notification issued in the name of the Governor, Punjab, or the President of India during the President’s rule. The Labour Commissioner under this notification should himself in his own name make a reference of an industrial dispute falling under section 2-A of the said Act to a Labour Court. The notification whereby a reference was made in the present case is not issued by the Labour Commissioner in his own name as a delegate of the State Government but he only authenticated it as a notification issued in the name of the President of India. He had no power of such authentication.”

Besides making the aforesaid observation, the learned Judge had proceeded to hold that it was not a case of individual dispute, but of a collective dispute relating to three workmen whose cause had been espoused by the union of workmen and, therefore, was not an individual dispute under section 2-A of the Act and the Labour Commissioner was not authorised to refer such a dispute for adjudication to the Labour Court and ultimately quashed the award of the Labour Court. The latter part of the decision of B. R. Tuli, J., that since it was espoused by a union, therefore, it ceased to be an individual dispute, has already been overruled by a Division Bench of this Court in *Algu Ram’s case* (supra).

(4) On the other hand, the counsel for the workman and the State had relied upon another Single Bench decision of H. R. Sodhi, J., in *Messrs Doaba Roadways Limited, Hoshiarpur v. The Labour Court and others* (3); and *Dattatraya Moreshwar v. The State of Bombay and others* (4), and had urged that since the power had clearly been delegated to the Labour Commissioner to issue notification under section 10, to refer an individual dispute, the mere

(2) 1969 Curr. L.J. 1000.

(3) 1971 P.L.R. 836.

(4) A.I.R. 1952 S.C. 181.

fact that he issued the notification in the name of the President of India did not make any difference in law and such a mistake on the part of the labour Commissioner was not of substance and was merely of form and, therefore, would not affect the validity of the notification referring the dispute to the labour Court. From the judgment of H. R. Sodhi, J., reliance has been placed on the following passage:—

“In the instant case, the Labour Commissioner was competent to refer the dispute to the Court since the same fell under section 8-A, and, to my mind, it makes no difference if the notification under section 10(1)(c) though signed by him purports to be in the name of the Governor. The Labour Commissioner seems to have thought that as a delegate of the powers of the State Government, he would issue a notification in the name of the Governor but no question of inherent lack of jurisdiction arises in such a case nor can reference be held to be invalid on this ground. At the most, it was merely a technical or a formal defect not affecting the competence of the labour Commissioner or jurisdiction of the Labour Court. The contention advanced by the learned counsel is thus, devoid of force and must be repelled.”

H. R. Sodhi, J., had made reference to the decision of B. R. Tuli, J., to distinguish that case on facts, saying that it was also held therein that it was not a case of individual dispute whereas the case before H. R. Sodhi, J., was of individual dispute.

(5) A reading of the Supreme Court judgment in *Dattatraya Moreshwar's case* (supra) shows that it was ruled therein that when a provision of a statute relates to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory, the neglect of which would not affect the validity of the acts done. It would be useful to reproduce the exact passage therefrom:—

“It is well settled that generally speaking the provisions of a statute creating public duties are directory and those

conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

In view of the aforesaid observations of the Supreme Court, it is quite patent that the decision of H. R. Sodhi, J., is correct and that of B. R. Tuli, J., does not lay down the correct law. The impugned notification could be issued by the Labour Commissioner and has, in fact, been issued by him. The statement in the notification, that the President of India considered it desirable to refer the dispute, did not make any difference in substance as he was satisfied about the reference of the dispute and, as delegate of the State Government, could refer the same. It appears that all references issued earlier, before the power was delegated to him, were being issued by the State Government in the name of the Governor or the President, as the case may be, and he also followed the same procedure. This, in no way, affected the validity of the reference.

(6) For the reasons recorded above, while approving the decision of H. R. Sodhi, J., in *Messrs. Doaba Roadways Limited, Hoshiarpur's case* (supra) and overruling the decision of B. R. Tuli, J., in *Municipal Committee, Patiala's case* (supra), we answer the question referred to us in the negative and hold that the impugned notification is not void and without jurisdiction and is not liable to be quashed.

(7) Since this was the only question left for decision in this case, which is also being decided against the writ-petitioner, the writ-petition is dismissed with costs.

Bhopinder Singh Dhillon, J.—I agree.

H. S. B.