OSHIAR PRASAD AND OTHERS

v.

THE EMPLOYERS IN RELATION TO MANAGEMENT OF SUDAMDIH COAL WASHERY OF M/S BCCL, DHANBAD, JHARKHAND

(Civil Appeal No.1389 of 2015)

FEBRUARY 02, 2015

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND ABHAY MANOHAR SAPRE, JJ.]

Industrial Disputes Act, 1947 – s. 10 – Reference of disputes to Boards, Courts or Tribunals by the appropriate Government – Power of – Held: Appropriate Government is empowered to make a reference u/s. 10 only when 'industrial dispute exists' or 'is apprehended between the parties' – Tribunal while answering the reference has to confine its inquiry only to the question(s) referred – On facts, services of the appellants, at whose instance the reference was made were terminated long back prior to making of the reference – Thus, there was no industrial dispute that 'existed' or 'apprehended' in relation to appellants' absorption in the services of the BCCL on the date of making the reference – In view thereof, absorption or regularization of appellants in the services of BCCL, did not arise and nor could be gone into on its merits – Furthermore, no parity could be sought with the reference made by the 39 workers in the BCCL wherein they were absorbed because they were in the service – Thus, courts below rightly held that the appellants were not entitled to claim any absorption in the services qua the BCCL – However, appellants entitled to claim the retrenchment compensation from the Contractor/BCCL.

A Disposing of the appeal, the Court

HELD: 1.1 The appropriate Government is empowered to make a reference under Section 10 of the Industrial Disputes Act, 1947 only when "industrial B dispute exists" or "is apprehended between the parties". The tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. C A fortiori, no inquiry can be made on those questions, which are not specifically referred to the tribunal while answering the reference. [Para 25] [553-D-F]

1.2 The services of the appellants and those at whose D instance the reference was made were terminated long back prior to making of the reference. These workers were, therefore, not in the services of either Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that E "existed" or "apprehended" in relation to appellants' absorption in the services of the BCCL on the date of making the reference. Indeed a dispute regarding the appellants' absorption was capable of being referred to F in reference for adjudication, had the appellants been in the services of Contractor or/and BCCL. But since the appellants' services were discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularization in the G services of BCCL, as claimed by them, did not arise and nor this issue could have been gone into on its merits for the reason that it was not legally possible to give any direction to absorb/regularize the appellants so long as they were not in the employment. [Paras 26, 27] [553-F-H H; 554-A-C]

1.3 The only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of appellant's emp'oyment was not referred to the tribunal and, therefore, it attained finality against the appellants. Therefore, the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived. [Paras 29,30] [554-F-G]

1.4 There is no parity in the facts of the earlier reference made to decide the absorption of 39 workers in the BCCL and the instant case. This could be made because they were in the service. So far as the instant case is concerned, the appellants were not in service. Merely because the workers in both the references were working in one project by itself was not enough to give them any right to claim parity with the claim of others. So long as, the parity was not proved on all the relevant issues arising in the case, no worker whether individual or collectively was entitled to claim the relief only on the basis of similarity in the status qua employer. Thus, the reference made to examine the issue of appellants' absorption qua the BCCL was incapable of being referred to on the said question and in any event, it was incapable of being answered in favour of the appellants. [Paras 31, 32, 33] [554-H; 555-A-D]

1.5 That apart, when three courts, despite this infirmity, went into the facts and held that the appellants were not entitled to claim any absorption in the services qua the BCCL, then they were right in holding so and there is no good ground to go into the factual issues de novo in appellate jurisdiction. The factual findings recorded by the three Courts are binding on this Court. Therefore,

A there is no ground to set aside the impugned order. [Para 34, 35] [555-E-G]

1.6 Having regard to the peculiar facts of this case and the reasons given below, the appellants are entitled to
B claim the retrenchment compensation from the Contractor/BCCL. Firstly, the respondent in their written statement filed before the tribunal offered to pay the retrenchment compensation to all such workers in accordance with the provisions of Section 25F of the Act.
C Secondly, no documents were filed by the respondent to show that any such compensation was paid to the appellants or to any worker till date by the respondent and lastly, more than three decades have passed and
D yet the issues of absorption, and/or payment of compensation has not attained finality. Following the course adopted by this Court in **Pottery Mazdoor Panchayat* case, Industrial Tribunal is directed to verify the case of the appellants (150 or so) for deciding each
E worker's claim for payment of retrenchment compensation to him/her as per the provisions of Section 25F and accordingly he/she be paid retrenchment compensation. [Paras 36, 37 and 39] [556-A-C; 557-E-F]

F **Pottery Mazdoor Panchayat vs. Perfect Pottery Co. Ltd. and Another* (1979) 3 SCC 762 – relied on.

Delhi Cloth and General Mills Co. Ltd. vs. The Workmen and Others AIR 1967 SC 469: 1967 SCR 882; *M/s Firestone*
G *Tyre & Rubber Co. of India (P) Ltd. vs. The Workmen Employed, represented by Firestone Tyre Employees' Union* AIR 1981 SC 1626:1982 (1) SCR 20; *National Engineering Industries Ltd. vs. State of Rajasthan & Ors.* 1999 (5) Suppl. SCR 87: (2000) 1 SCC 371; *Mukand Ltd. vs. Mukand Staff*
H *& Officers' Association* 2004 (2) SCR 951: (2004) 10 SCC

460; *State Bank of Bikaner & Jaipur vs. Om Prakash Sharma* **2006 (2) Suppl. SCR 701: (2006) 5 SCC 123 – referred to.** A

Case Law Reference

1967 SCR 882	**Referred to**	**Para 21**	B
1982 (1) SCR 20	**Referred to**	**Para 24**	
1999 (5) Suppl. SCR 87	**Referred to**	**Para 24**	
2004 (2) SCR 951	**Referred to**	**Para 24**	C
2006 (2) Suppl. SCR 701	**Referred to**	**Para 24**	
(1979) 3 SCC 762	**Relied on**	**Para 39**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1389 of 2015 D

From the Judgment and Order dated 17.06.2011 of the High Court of Jharkhand at Ranchi in L.P.A. No. 447 of 2009

Ramesh P. Bhatt, S. K. Sinha, Kumar Gaurav, B. N. Dubey, Sajith P. for the Appellants. E

Anupam Lal Das, Anirush Singh for the Respondent.

The Judgment of the Court was delivered by F

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This civil appeal is filed by the unsuccessful writ petitioners against the judgment and order dated 17.06.2011 passed by G the High Court of Jharkhand at Ranchi in L.P.A. No. 447 of 2009 which arises out of the order dated 03.09.2009 passed by the learned single Judge of the High Court in C.W.J.C. No. 616 of 1999(R).

H

A 3. By impugned judgment, the Division Bench dismissed the appellants' intra court appeal and upheld the order of the writ court, which had dismissed the appellants' writ petition and in consequence upheld the award dated 21.12.1998 passed by the Labour Court in Reference Case No. 75 of 1995.

B

4. In order to appreciate the controversy involved in this appeal, it is necessary to set out the facts in detail.

5. The respondent - M/s Bharat Coking Coal Ltd (hereinafter C referred to as "the BCCL") is a Government of India undertaking. It is engaged in the business of manufacture and sale of various kinds of coal. It has a colliery at Dhanbad, Jharkhand known as "Sudamdih Coal Washery".

D 6. On 24.07.1974, the BCCL invited tenders for construction of Washery on Turnkey basis for running the colliery. The contract was awarded to one Company - M/s MC Nelly, Bharat Engineering Company Ltd. (hereinafter referred to as "the Contractor"). An agreement was accordingly executed between E the BCCL and the Contractor on 29.01.1976. Since the execution of the work was to be done on turnkey basis, the Contractor was required to do every thing to make the Washery operational. The work included the complete design of the Washery, supply of materials required for construction of plant, F building, installation of machinery, all kinds of construction of the structures of Washery etc.

7. Pursuant to the contract, the Contractor started the work in 1977 by employing several skilled and unskilled workers and G completed the same by December 1979. After completion of the work, the Contractor terminated the employment of all the workers and offered them retrenchment compensation as per the provisions of Section 25 of Industrial Disputes Act, 1947 (in short "the Act") except 39 skilled workers, who were retained H

to look after the maintenance work of Washery after it was made operationalized. These 39 workers continued to work. After retaining their services for about one year, the Management terminated the services of these 39 employees in January, 1981. These 39 employees raised a dispute demanding their absorption and continuation in service with the BCCL. Since their demands were not accepted, a reference was made under Section 10 of the Act to Industrial Tribunal No. 3 Dhanbad vide Reference Case No. 58 of 1981 to answer the following question:

> **"Whether the management of Sudamdih Coal Washery of M/s Bharat Coking Coal Ltd., P.O. Sudamdih, Dist. Dhanbad are justified in not absorbing Sarvashri Gorakh Sharma and 38 others as their regular employees? If not, to what relief are the said workmen entitled?"**

8. The Industrial Tribunal by its award dated 03.03.1983 answered the reference in workers' favour and directed that 39 workers be absorbed by the BCCL in their employment as their regular employees and they be given all such consequential benefits to which they were entitled to claim due to their regularization in the services of BCCL. The BCCL did not challenge the award and implemented the directions by absorbing and regularizing these 39 workers in their employment.

9. It may be mentioned that five workers (including the appellants herein), who claimed to be working in the same project, filed Title Suit No. 51/1980 against the BCCL in the Court of Munsif 2nd Dhanbad under Order I Rule 11 of the Code of Civil Procedure, 1908 for declaration that they are entitled to continue in their services under the BCCL and prayed that their services be absorbed and regularized in the services of

A BCCL with all consequential benefits. They also prayed for an injunction restraining the BCCL from terminating their services pending civil suit.

10. The Trial Court, however, on contest declined to grant the B temporary injunction to the plaintiffs. It is not in dispute that during the pendency of the suit, the services of these workers were discontinued. They were, therefore, no more in the employment.

C 11. By judgment and decree dated 27.05.1983, the trial Court decreed the suit and held that the plaintiff's are entitled to continue in services of BCCL.

12. Felt aggrieved, the BCCL filed Title Appeal No. 71 of 1983 D before the Appellate Court. The Appellate Court by judgment and order dated 16.12.1986 dismissed the appeal and confirmed the judgment and decree of the Trial Court.

13. The BCCL pursued the matter further and filed an appeal E being Second Appeal No.23 of 1987(R) before the High Court. The High Court, by judgment and order dated 05.03.1993 allowed the Second Appeal and set aside the judgment and decree of the two Courts which had decreed the plaintiffs' suit. It was held that the suit was not maintainable in the light of F provisions of Labour laws.

14. Against the aforesaid judgment, the plaintiffs (workers) filed Special Leave Petition being Special Leave Petition (C) No. 4495 of 1994 before this Court. By order dated 14.11.1994, G this Court, after granting leave, dismissed the appeal (C.A. No.8403/1994) with a liberty to the plaintiffs/appellants to approach the Industrial Tribunal for claiming any appropriate relief, if so advised.

H 15. It is with this background, the plaintiffs (five workers)

approached the Central Government under Section 10 of the Act and also on behalf of as many as 150 workers espousing their cause in representative capacity for their absorption and regularization and prayed for making an industrial reference to the Industrial Tribunal for its adjudication. The Government acceded to their request and accordingly made the following reference to the Industrial Tribunal to adjudicate:

> **"Whether the management of Sudamdih Coal Washery of M/s Bharat Coking Coal Ltd., P.O. Sudamdih, Dist. Dhanbad are justified in not absorbing Ainuel Haque and 150 others (as in the list annexed) as their regular employees? If not, to what reliefs are the said workmen entitled?"**

16. The Industrial Tribunal by award dated 21.12.1998 answered the reference against the workers. It was held that they were not entitled to seek their absorption in the Services of BCCL as their regular employees. The workers, felt aggrieved, filed C.W.J.C.No. 616 of 1999(R) before the High Court. The learned single Judge by orders dated 03.09.2009 dismissed the writ petition and upheld the award passed by the Tribunal. The workers pursued the matter and filed intra Court appeal being L.P.A. No. 447 of 2009. The Division Bench by impugned judgment dismissed the appeal finding no fault in the award. Challenging the said order, the workers filed this appeal by way of special leave before this Court.

17. While assailing the legality and correctness of the impugned judgment, Mr. R.P. Bhatt, learned Senior Counsel for the appellants mainly urged two points. His first submission was that the Courts below erred in not answering the reference in favour of the appellants and thereby Courts below erred in not granting them the relief for which the reference was made. His second submission was that since the identical reference

A (Reference Case No.58/1981) made at the instance of 39 workers alike the appellants was answered in workers' favour vide award dated 03.03.1983, *a fortiori,* the present reference being identical in nature should also have been answered in favour of the appellants to maintain the parity. In other words, B the submission was that if one set of workers got the benefit earlier in point of time from the Court, the other set of workers similarly placed too should have been granted the same benefits. In the alternative, learned Senior Counsel urged that in any event, the appellants were not paid any retrenchment C compensation, for which otherwise they were entitled to get from the Contractor or/and BCCL as per the provisions of Section 25 of the Act read with the provisions of Contract Labour Prohibition and Regulation Act, 1970 and hence to this extent, this Court can still direct either Contractor or the D BCCL or both, as the case may be, to pay the retrenchment compensation to the appellants.

18. In Contra, learned Counsel for the respondent-BCCL supported the impugned order and contended that no case is E made out by the appellants to interfere in the impugned order and hence the appeal merits dismissal.

19. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the main F submissions of the appellants but find substance in the alternative submission.

20. Before we examine the factual matrix of the case in hand, we consider it apposite to take note of law laid down by this G Court regarding the powers of the appropriate Government in making reference under Section 10 of the Act and the jurisdiction of the Tribunal while answering the reference. Indeed it is well settled and remains no more *res integra*.

H

21. One of the questions which fell for consideration by this Court in **Delhi Cloth and General Mills Co. Ltd.** vs. **The Workmen and Others** (AIR 1967 SC 469) was that what are the powers of the appropriate Government while making a reference and the scope and jurisdiction of Industrial Tribunal under Section 10 of the Act.

22. Justice Mitter, speaking for the Bench, held as under:

> **"(8) .....Under S. 10(1)(d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring**
>
> **"the dispute or any matter appearing to be connected with, or relevant to the dispute,.....to a Tribunal for adjudication" under s. 10(4)**
>
> **"where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."**
>
> **(9) From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it**

A **but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word 'incidental' means according to Webster's New World Dictionary :**

B **"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated :"**

C **"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental**
D **thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct to it....."**

23. The same issue came up for consideration before three
E Judge Bench in a case reported in **Pottery Mazdoor Panchayat** vs. **Perfect Pottery Co. Ltd. and Another,** (1979) 3 SCC 762. Justice Y.V. Chandrachud - the learned Chief Justice speaking for the Court laid down the following proposition of law:
F

"10. Two questions were argued before the High Court: Firstly, whether the tribunals had jurisdiction to question the propriety or justification of the closure and secondly,
G **whether they had jurisdiction to go into the question of retrenchment compensation. The High Court has held on the first question that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically**
H

referred for its adjudication and to matters incidental thereto and that the Tribunal cannot go beyond the terms of the reference made to it. On the second question the High Court has accepted the respondent's contention that the question of retrenchment compensation has to be decided under Section 33-C(2) of the Central Act.

11. Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management."

A 24. The abovesaid principle of law has been consistently reiterated in **M/s Firestone Tyre & Rubber Co. of India (P) Ltd.** vs. **The Workmen Empoloyed, represented by Firestone Tyre employees' Union** AIR 1981 SC 1626, **National Engineering Industries Ltd.** vs. **State of** B **Rajasthan & Ors.**, (2000) 1 SCC 371, **Mukand Ltd.** vs. **Mukand Staff & Officers' Association**, (2004) 10 SCC 460 and **State Bank of Bikaner & Jaipur** vs. **Om Prakash Sharma**, (2006) 5 SCC 123.

C 25. It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the D question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. *A fortiori*, no inquiry can be made on those questions, which are not specifically referred to the E Tribunal while answering the reference.

26. Coming now to the facts of this case, it is an admitted case that the services of the appellants and those at whose instance the reference was made were terminated long back F prior to making of the reference. These workers were, therefore, not in the services of either Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that "existed" or "apprehended" in relation to appellants' absorption in the services of the BCCL G on the date of making the reference.

27. Indeed a dispute regarding the appellants' absorption was capable of being referred to in reference for adjudication, had the appellants been in the services of Contractor or/and BCCL. H But as said above, since the appellants' services were

discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularization in the services of BCCL, as claimed by them, did not arise and nor this issue could have been gone into on its merits for the reason that it was not legally possible to give any direction to absorb/ regularize the appellants so long as they were not in the employment.

28. It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force *inter se* employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.

29. In our considered opinion, the only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of appellants' employment and - whether it was legal or not? It is an admitted fact that it was not referred to the Tribunal and, therefore, it attained finality against the appellants.

30. In our considered opinion, therefore, the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived.

31. Apart from this infirmity noticed in this case, we have also not been able to find any parity in the facts of the earlier reference (R.C.No.58/81) and the case in hand. As noted above, the earlier reference was made to decide the absorption of 39 workers in the BCCL. This could be made because they were in the service. So far as the present case

A is concerned, the appellants were not in service.

32. It can safely be noted that merely because the workers in both the references were working in one project by itself was not enough to give them any right to claim parity with the claim
B of others. So long as, the parity was not proved on all the relevant issues arising in the case, no worker whether individual or collectively was entitled to claim the relief only on the basis of similarity in the status *qua* employer.

C 33. In the light of foregoing discussion, we are of the considered opinion that the reference made to examine the issue of appellants' absorption *qua* the BCCL was incapable of being referred to on the said question and in any event, it was incapable of being answered in favour of the appellants.
D

34. That apart, when three Courts, despite this infirmity, went into the facts and held that the appellants were not entitled to claim any absorption in the services *qua* the BCCL, then in our considered opinion, they were right in holding so and we
E do not find any good ground to go into the factual issues *de novo* in our appellate jurisdiction. The factual findings recorded by the three Courts are binding on this Court.

35. We, therefore, find no ground to set aside the impugned
F order and accordingly uphold the same.

36. This takes us to the next question as to whether the appellants are entitled to claim the relief of payment of retrenchment compensation. Having given our anxious
G consideration to this issue, we are of the considered view that having regard to the peculiar facts of this case and the reasons, which we have set out hereinbelow, we are inclined to hold that the appellants are entitled to claim the retrenchment compensation from the Contractor/BCCL.
H

37. It is for the reason that firstly, the respondent in their written statement filed before the Tribunal have offered to pay the retrenchment compensation to all such workers in accordance with the provisions of Section 25F of the Act. Secondly, no documents were filed by the respondent to show that any such compensation was paid to the appellants or to any worker till date by the respondent and lastly, more than three decades have passed and yet the issues of absorption, and/or payment of compensation has not attained finality.

38. Indeed, in similar circumstances, this Court in the case of **Pottery Mazdoor Panchayat's case** (supra) had directed payment of retrenchment compensation to the workers and made the following pertinent observations in the concluding paras:

> **"17. It is unnecessary to consider the second question as regards the payment of retrenchment compensation and we will, therefore, express no opinion as to whether the Tribunals had jurisdiction to go into that question. Happily, the parties have arrived at a settlement on that question under which, the respondent agrees to fix within a period of six months from today the retrenchment compensation payable to the retrenched workers in accordance with the provisions of Section 25FFF of the Central Act, namely, the Industrial Disputes Act, 1947, without the aid of the proviso to that section. After the retrenchment compensation is so fixed, a copy of the decision fixing the compensation payable to each of the worker will be sent by the respondent to the appellant Union. The workers or their legal representatives, as the case may be,**

will then be entitled to receive the retrenchment compensation from the respondent, which agrees to pay the same to them. The respondent will be entitled to set off of the amounts of retrenchment compensation already paid to the workers against the amounts found due to them under this settlement. On receiving the retrenchment compensation the workers concerned shall withdraw the applications, if any, filed by them for relief in that behalf.

18. We would only like to add that the compensation which will be paid to the workers will be without prejudice to their right, if any, to get employment from the respondent in the new business as and when occasion arises."

39. Following the course adopted by this Court in **Pottery Mazdoor Panchayat (supra),** we direct the Industrial Tribunal to verify the case of the appellants (150 or so) for deciding each worker's claim for payment of retrenchment compensation to him/her as per the provisions of Section 25F of the Act and accordingly he/she be paid retrenchment compensation. In case any worker has expired then his/her compensation amount be paid to his/her legal representative after making proper verification of the case.

40. We, however, make it clear that the respondent would not raise any objection about the maintainability of workers' claim nor would raise any objection on merits before the Tribunal and the inquiry would only confine to determine the quantum of retrenchment compensation payable to each worker.

41. The appellants and respondents would appear before the Tribunal on 16.02.2015 and file necessary documents to

enable the Tribunal to verify the claim of each worker for determining the quantum of compensation. The Tribunal would issue notice to the Contractor to enable them to participate in the proceedings in the light of provisions of Contract Labour Prohibition and Regulation Act, 1970. The appellants and all such workers can be represented through recognized Union before the Tribunal.

42. The entire exercise should be completed and payment be made to the workers within six months.

43. With these directions, the appeal stands disposed of.

Nidhi Jain

Appeal disposed of.