

Virendra Bhandari vs Rajasthan State Road Transport ... on 5 April, 2002

Equivalent citations: [2002(94)FLR624], JT2002(5)SC21, (2002)IIILLJ256SC, RLW2002(3)SC430, (2002)9SCC104, (2002)2UPLBEC1838, AIRONLINE 2002 SC 197, 2002 SCC (L&S) 1061, (2002) 5 SERV LR 168, (2002) 2 CUR LR 995, 2002 (9) SCC 104, (2002) 3 RAJ LW 430, (2002) 3 SCT 974, (2002) 3 LAB LN 758, (2002) 2 UPLBEC 1838, (2002) 3 LAB LJ 256, (2002) 94 FAC LR 624, (2002) 3 ALL WC 2370, (2002) 5 JT 21, 2002 LAB LR 1085, (2002) 6 SUPREME 252, (2002) 5 JT 21 (SC)

Bench: S. Rajendra Babu, B.N. Agrawal

ORDER

1. Leave granted.

2. A reference was made to the industrial tribunal-cum-labour court (hereinafter referred to as the tribunal) for adjudication of a dispute in terms of Section 10(d) read with Section 12(5) of the Industrial Disputes Act on the question of termination of the services of the workman and forfeiture of the certain amount of wages for the period of suspension. The tribunal by an adjudication made on 8.8.1985 held that though notices had been served upon the appellant he had remained ex-parte. The tribunal proceeded to state that there does not remain any dispute between the parties and made the adjudication in that manner. Thereafter, an application was filed by the appellant and by an order made on 29.8.1987, the same was disposed of by the tribunal stating that the appellant had not evinced any interest in the dispute, that there has been delay in seeking restoration of those proceedings and, therefore, it is not proper to cancel the award after having issued notification after the award was made.

3. However, the government by another order dated 20.12.1988 made a reference of a dispute to the tribunal on the same questions on which earlier reference had been made. On this occasion, the tribunal adjudicated the matter and made an award which was challenged before the High Court by the respondents. The High Court found that the tribunal had given a finding on the earlier occasion that no industrial dispute exists which is in itself a determination of the question relating to the industrial dispute and would fall within the definition of term 'award' under the Industrial Disputes Act and, therefore, second reference was incompetent. Inasmuch as no claim petition had been filed by the appellant on the earlier occasion when the reference was made, it is not permissible for them to agitate the matter any further. We fail to appreciate neither the manner in which the tribunal disposed of the matter on the first occasion nor the manner of approach made by the High Court.

4. A perusal of the award made on the earlier occasion will clearly indicate that there is no adjudication of the dispute at all. All that was stated was that the concerned parties had not

appeared before the tribunal and in such an event, the tribunal should have noted its inability to record the finding on the issue referred to it not that the dispute does not exist.

When there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists, as is opined by the government such a matter can be referred under Section 10 of the Industrial Disputes Act. What is to be borne in mind in proceedings of this nature is that the industrial disputes are referred to the labour court or the industrial tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. That aspect seemed to have been lost sight of by the tribunal on the first occasion and by the High Court in the order under appeal. In this background, it was certainly permissible for the government to have made the second reference on which occasion after inquiring into the matter, the tribunal adjudicated the matter finally.

5. Therefore, we set aside the order made by the division bench of the High Court affirming that of the learned single judge and remit the matter to the High Court by restoring the writ petition for fresh consideration on merits in accordance with law. Instead of the writ petition being remanded to the learned single judge, we direct that the writ petition be heard and disposed of by the division bench of the High Court. The appeals are allowed accordingly.