

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 73 of 2023

Dainik Jagran –I-Next, a unit of Jagran Prakashan Limited, a company registered under the Companies Act, 1956, through its Manager (Personnel), Anil Kumar Tripathi, aged about 55 years, Son of Sri Shyam Bihari Tripathi, 62, Kokar Industrial Area, P.S. Sadar, P.O. & District Ranchi, PIN- 834001 (Jharkhand). **Petitioner**

... ... Petitioner

Versus

1. The State of Jharkhand.
 2. The Principal Secretary, Department of Labour, Employment and Training, Government of Jharkhand, Project Bhawan, Dhurwa, P.S. Jagarnathpur, P.O. & District Ranchi, PIN – 834004 (Jharkhand).
 3. The Labour Commissioner, Government of Jharkhand, Shram Bhawan, Doranda, P.O. & P.S. Doranda, District Ranchi, PIN – 834002, (Jharkhand).
 4. Imran Ali, Son Hafeez Ahmad, resident of Road No. 3, Near House of Kari Maulana, Noor Nagar, Purani Ranchi, P.S. Sukhdeonagar, P.O. & District Ranchi, PIN – 834001, (Jharkhand). Respondents

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOURHARY

For the Petitioner

: Mr. Sanjay Kaushal, Sr. Advocate

: Mr. Nipun Bakshi, Advocate

: Mr. Vikas Kumar Sinha, Advocate

: Mr. Manoj Kumar Dubey, Ado

For the Respondent No. 4

: Mr. Shadab Bin Haque, Advocate

: Mr. Ankit Apurva, Advocate

For the State

: Mr. Amitesh Kumar Geesen, AC to AAG-JA

11/13thMay 2024

1. Learned counsel for the parties are present.
 2. This writ petition has been filed for the following relief(s):-

“(i). For issuance of a writ of or in the nature of a Certiorari for quashing and/or setting aside the notification bearing no. 01/Sharma.D.-4-08/16L&E 1479, dated 01.12.2022 [Annexure – 9] containing an amended reference of industrial dispute purportedly, in exercise of powers conferred under Section 10(1)(c) of the Industrial Disputes Act, 1947, by adding additional question to the original terms of reference, without holding any conciliation proceedings and also without ascertaining whether the additional

issue/question referred was pursuant to existence of any industrial dispute between the parties.

(ii). For issuance of any other appropriate writ/ order/ direction against the order to amend the terms of reference already referred to the learned Labour Court earlier as Reference 04 of 2017 as this amendment is manifestly illegal, ex facie futile, academic and wholly irrelevant.

3. During the course of arguments, it is not in dispute that Reference Case No. 04 of 2017 is pending consideration before the learned Labour Court, Ranchi, by virtue of reference made under Section 10(1)(c) read with Sub Section (2A) of Section 10 of the Industrial Disputes Act,1947.

4. The terms of the reference *is*—

“whether the termination in service of Sri Imran Ali by the M/s-I next, 62, Kokar Industrial Area, Ranchi is justified? If not, what relief he is entitled to?”

5. The grievance of the petitioner is that in the midst of the pendency of the reference case, the terms of reference itself has been amended by virtue of notification no. 1479 dated 01.12.2022 (Annexure – 9). The amended reference reads as follows: -

“(i). Whether the termination of service of Sri Imran Ali by M/s I-next, 62 Kokar Industrial Area, Ranchi is justified? If not, what relief he is entitled to?

(ii). Whether Sri Imran Ali an employee of M/s I-next, 62, Kokar Industrial Area, Ranchi is entitled to get his regular due salary, facilities and other emoluments under the Majithia Wage Board Award?

(iii). Whether he is entitled for any other compensation too?”

6. Learned Senior Counsel for the petitioner submits that prior to amending the reference, no notice was issued to the petitioner and consequently, no conciliation proceeding was held. He submits that the amended reference has the effect of enlarging the scope of reference itself. He further submits that amended reference with regard to salary in terms of ***Majithia Wage Board Award*** effects a large number of employees of the petitioner and the same could not have been a part of the pending reference which is essentially an individual dispute of the workman. He further submits that the terms of reference which was made earlier clearly indicates that the learned labour court was also to consider the consequences in terms of his entitlement if his so-called termination of service is set aside. Learned senior counsel for the petitioner further submits that there is a serious dispute as to whether a termination letter was issued to the private respondent or not.

7. The learned Senior Counsel submits that the amendment to the terms of reference is a jurisdictional error, therefore, the present writ petition has been filed.

8. He has referred to the judgment passed by the Hon'ble Supreme Court in the case of **Hind Filter Ltd. & Anr. Vs. Hind Filter Employees' Union & Anr.** in **Civil Appeal No. 8801 of 2012** decided on 17th August, 2023 to submits that there is a difference in reference covered by second schedule and third schedule of the Industrial Disputes Act,1947. It is submitted that the payment in terms of **Majithia Wage Board Award** is essentially a dispute covered by third schedule. He further submits that the number of employees in the unit of the petitioner at Ranchi is more than 100 employees. therefore, such issue regarding payment in terms of **Majithia Wage Board Award** could not have been referred to the learned Labour Court thereby enlarging the scope of reference.

9. Learned senior counsel submits that in case a dispute of such a nature is raised in an appropriate manner, the same at best could have been referred to an Industrial Tribunal and not to the Labour Court. He further submits that if there is any pronouncement in connection with emoluments under **Majithia Wage Board Award** that will affect large number of employees, so the impugned amended reference is fit to be set aside.

10. Learned counsel for the petitioner has submitted that in case the termination is set aside, the highest relief that the petitioner can get, is reinstatement of service with back wages subject to discretion of the learned Labour Court under Section 11A.

11. Learned counsel for the respondents-state on the other hand has not been able to show any materials placed on record that there was any deliberation or conciliation in connection with the amended reference nor there is any material to show that notice was ever issued to the petitioner before amending the reference.

12. Further, the Learned counsel has cited reasons for not issuing notice to the petitioner prior to amending the reference by submitting that the record shows that the petitioner never cooperated in the conciliation proceedings prior to making the initial reference vide order of reference dated 13.02.2017

and therefore, it would have made no difference even if notice was issued to the petitioner prior to amending the reference. Therefore, issuance of notice to the petitioner would have made no difference because petitioner has been totally non co-operative with the officers of the labour department.

13. Learned counsel for the private respondent has adopted the aforesaid submissions made by the State and has submitted that no further notice was required to be issued to amend the term of reference. He further submits that the petitioner has never raised that objection before the learned Labour Court and they have filed a petition for amendment of the written statement pursuant to the amended reference, which is pending consideration before the learned Labour Court.

14. Learned counsel has referred to paragraph nos. - 16 and 17 of the aforesaid judgment passed by the Hon'ble Supreme Court and submitted that in the present case it is only a matter related to the individual workman and there is no question of all the workmen of the petitioner being affected by any such adjudication with regard to the wages of the private respondent.

15. Learned counsel has further referred to proviso to Section 10(d) to submit that even for the matters covered by the third schedule of the Industrial Disputes Act,1947, if the dispute does not affect more than 100 workmen, then the reference would lie before the Labour court and he reiterates that the disputes in the present case is only related to one workman i.e. private respondent.

16. After hearing the learned counsel for the parties, and considering the facts and circumstances of this case, this Court finds that the reference made vide notification dated 13.02.2017 was clear as to whether the termination of the private respondent was justified and if not, what relief he is entitled to?

17. This Court also finds that there is a dispute between the parties as to whether the services of the private respondent was ever terminated. This Court is of the view that in case, it is held that the alleged termination of service of the private respondent was not justified, the private respondent would be entitled to consequential relief in terms of the provisions of the Industrial Disputes Act, 1947 read with various judgments which have been passed by various Courts from time to time.

18. It further appears that the initial reference which was numbered as Reference Case No. 04 of 2017 is at the fag end and the matter was at the stage of arguments. At this stage ,an application dated 09.09.2022 was filed by the private respondent seeking amendment to the terms of reference and upon his application the terms of reference was amended to include further relief, that is,

(II). whether Sri Imran Ali an employee of M/s I-next, 62 Kokar Industrial Area, Ranchi, is entitled to get his regular due salary facilities and other emoluments under Majethiya Wage Board Award?

(III). Whether he is entitled for any other compensation too?"

19. From the perusal of the records of this case and upon submissions made by the learned counsel for the parties, it is not in dispute that the said amendment to the reference was made without giving an opportunity of hearing to the petitioner. Learned counsel for the respondents have tried to justify such action of the respondents-state by submitting that even at the stage of earlier reference, the petitioner never cooperated in the conciliation proceeding before the learned Labour Commissioner and ultimately, no settlement could be arrived.

20. This Court is of the considered view that merely because the petitioner was not co-operating at the time of the making of Original Reference dated 13.02.2017, that by itself cannot be a ground not to issue notice to the petitioner before amending the original terms of reference.

21. This Court is also of the view that having not issued notice to the petitioner, the petitioner has been highly prejudiced inasmuch as there was no occasion for the petitioner to raise an issue before the state authority as to how and in what manner, the proposed amendment to the terms of reference would affect its other employees. There was no occasion for the petitioner to bring to the notice of the state authority that amending terms of reference would affect its other employees and the total number of employees were more than 100 employees. The said opportunity having been denied to the petitioner and the terms of reference have been amended at the back of the petitioner, there was no option for the petitioner but to seek an amendment to the written statement filed before the learned Court but that by itself will not

debar this Court from exercising power under Article – 226 of the Constitution of India challenging the amendment to the reference. The impugned amendment also involves a jurisdiction issue of the learned labour court.

22. Section 10 of the Industrial Disputes Act, 1947 and its second and third schedules read as under:-

“10. Reference of disputes to Boards, Courts or Tribunals:-

- (1). Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-*
- (a). refer the dispute to a Board for promoting a settlement thereof; or*
- (b). refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*
- (c). refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*
- (d). refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:*

Provided that where the dispute relates to any matter specified in the Third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)”

“THE SECOND SCHEDULE MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

1. *The propriety or legality of an order passed by an employer under the standing orders;*
2. *The application and interpretation of standing orders;*
3. *Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;*
4. *Withdrawal of any customary concession of privilege;*
5. *Illegality or otherwise of a strike or lock-out; and*
6. *All matters other than those specified in the Third Schedule.*

THE THIRD SCHEDULE MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

1. *Wages, including the period and mode of payment;*
2. *Compensatory and other allowances;*
3. *Hours of work and rest intervals;*
4. *Leave with wages and holidays;*
5. *Bonus, profit sharing, provident fund and gratuity;*
6. *Shift working otherwise than in accordance with standing orders;*
7. *Classification by grades;*
8. *Rules of discipline;*
9. *Rationalisation;*
10. *Retrenchment of workmen and closure of establishment; and Any other matter that may be prescribed.”*

23. Upon perusal of the aforesaid provision of Industrial Disputes Act, it is apparent that the matter relating to wages normally falls under the third Schedule and within the jurisdiction of Industrial Tribunals and in terms of proviso to Section 10(1)(d) where the dispute relates to any matter specified in the third schedule and is not likely to affect more than 100 workmen, the appropriate government may, if it so thinks fit, makes the reference to a labour court under Section 10 (1) (c) of the Industrial Disputes Act, 1947.

24. The jurisdiction of the Labour Court as compared to that of Industrial Tribunal has been considered by the Hon'ble Supreme Court in the aforesaid judgement relied upon by the petitioner. The portion relevant for the purposes of this case from the aforesaid judgment passed by the Hon'ble Supreme Court is quoted as under: -

"7. Section 10(1) of the ID Act inter alia provides that where appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, by an order in writing, refer the dispute to the 'Labour Court' if it relates to the issues specified in the Second Schedule. Where the matter relates to the issues specified in the Third Schedule, the dispute is to be referred to a Labour Court, if the dispute is not likely to affect more than 100 workmen. Otherwise, Section 10(1)(d) of the ID Act provides that the disputes as enumerated in the Third Schedule are to be referred to a Tribunal. The aforesaid two terms have been defined in Section 2(kkb) and 2(r) of the ID Act, respectively.

.....
9. A perusal of the aforesaid Schedules shows that the matters, enumerated in the Second Schedule, are falling in the jurisdiction of the Labour Court. Whereas the matters, as mentioned in the Third Schedule, are within the jurisdiction of the Industrial Tribunal with the only exception that for dispute provided in the Third Schedule; if not more than 100 workmen are affected, reference is to be made to the Labour Court."

25. This court is of the considered view that the amendment in the original reference is not formal in nature and in fact it enlarges the scope of reference and touches upon the wages of other employees and the petitioner claims that in its Ranchi Unit there are more than 100 employees which could not be placed before the state authority amending the reference as no notice was issued to the petitioner. The justification given by the state for not issuing notice to the petitioner before amending the terms of reference by referring to their non cooperative attitude at the time of initial reference of dispute cannot be a ground for not issuing notice at the time of considering amendment to the reference and such an excuse is not acceptable to this

court. In such circumstances, the ex-parte order amending the reference cannot be sustained in the eyes of law.

26. This Court is also of the considered view that the term used in the original reference i.e. “if not, what relief he is entitled to?” is wide enough to include all consequential reliefs including back wages which would certainly depend upon the evidences led before the learned Labour Court in terms of Section 11A of the Industrial Disputes Act as the matter relates to individual dispute.

27. As a cumulative effect of the aforesaid findings, the impugned amendment to the original reference as contained in notification dated 01.12.2022 is set aside.

28. Learned senior counsel for the petitioner has confirmed that the amendment or additional written statement has been filed only on account of the amended terms of reference. As the amendment to the terms of reference has been set-aside, it is observed that the amendment sought for by the petitioner as a consequence of the amended reference would be of no use.

29. So far as the original reference is concerned, at this stage of the dictation of the order in the open court, the learned counsel for the parties have expressed their readiness to co-operate with the proceedings before the learned Labour Court for its expeditious disposal. It is informed that the next date in the matter is 31st May 2024 and it is otherwise fixed for final arguments.

30. In the aforesaid circumstances, the learned Labour Court, Ranchi is directed to make all endeavor to expeditiously decide the Reference Case No. 04 of 2017 as per the original terms of reference.

31. This writ petition is accordingly disposed of in aforesaid terms.

32. Pending I.A., if any, is closed.

(Anubha Rawat Choudhary, J.)

Aditi