Before Binod Kumar Roy, C. J. & Surya Kant, J

PRITAM SINGH,—*Appellant*

versus

P.O.L.C., U.T., CHANDIGARH AND ANOTHER,—*Respondents*

L.P.A. NO. 22 OF 1994

29th May, 2004

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 2(a)(ii) & 10(1)—Territorial jurisdiction—Industrial dispute—Reference—Retrenchment from service—Workman last employed at Tarn Taran—Order of retrenchment issued by the Head Office at Chandigarh but served at Tarn Taran—Chandigarh Admn. making a reference of the dispute under section 10(1)—"Appropriate Government"—Absence of an explicit provision in the Act to confer or determine the question of jurisdiction of the "appropriate Government" for making reference—All ingredients of an industrial dispute in the context of Section (2k) took place in Chandigarh—Occurrence of an industrial dispute does not necessarily depend only upon the situs of the employement where the worker was employed or where the order of retrenchment of his service is received—It always depends upon, the facts and circumstances of each case—Even if part of cause of action has arisen in the territory of a State its Government is competent to refer the dispute and if cause of action has arisen in the territories of more than one State it is open to aggrieved party to approach any one of the Governments for reference—Reference by the U.T., Chandigarh held to be a valid reference made by the appropriate Government in terms of Section 2(a)(ii).

Held, that even if part of cause of action has arisen in the territory of a State, its Government is competent to refer the dispute and if the facts culminating into occurrence of "cause of action" are scattered in the territories of more than one State, it is open to the aggrieved party to approach any one of the State Governments for getting the dispute referred.

(Para 16)

Further held, that it is the occurrence of an "industrial dispute" or a part thereof within the territory of a State which shall empower the Government of that state being the appropriate Government to make reference of an industrial dispute and occurrence of an industrial

dispute does not necessarily depend only upon the situs of the employment where the worker was employed or where the order of dismissal of his service, suspension or retrenchment is received. The question to determine as to who is the"appropriate Government" always depends upon the facts and circumstances of each case and in the light of the undisputed facts in the present case, the U.T. of Chandigarh is certainly the "appropriate Government" who could refer the industrial dispute for adjudication.

(Para 17)

Dinesh Kumar, Advocate, *for the appellant.*

Raman Mahajan, Advocate, *for respondent No. 2.*

JUDGMENT

SURYA KANT, J.

(1) This Letters Patent Appeal has been directed against the judgment dated 17th August, 1993 passed by the learned Single Judge deciding a bunch of writ petitions. The question of law, which has arisen for consideration, is "as to who should be the 'appropriate Government' in the present case in terms of Section 2(a)(ii) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act) for making reference of the industrial dispute under section 10(1) of the Act ?"

(2) The brief facts are that the appellant was appointed on temporary basis as a Fertilizer Clerk by the Managing Director of the Punjab Agro Industries Corporation, Chandigarh on 12th June, 1978 and his services were regularised on 24th January, 1979. The appellant, however, was retrenched from service,—*vide* an order dated 24th February, 1983 (Annexure P-1) which was issued from the Head Office situated at Chandigarh but was addressed and served upon the appellant while he was posted at Tarn Taran (Punjab). The appellant challenged the order of termination of his services in Civil Writ Petition No. 1399 of 1983 which was dismissed at motion stage on the ground that alternative and efficacious remedy under the Act was available to the appellant-workman. The appellant thereafter served a demand notice upon the management on 24th June, 1983 but the

dispute could not be resolved before the Conciliation Officer. Therefore, the appellant sought a reference of the industrial dispute raised by him from the Administration of Union Territory, Chandigarh. The Chandigarh Administration made the following reference to the Industrial Tribunal-cum-Labour Court at Chandigarh on 8th January, 1993 :—

> "Whether the services of Shri Pritam Singh were terminated illegally by the Management of Punjab Agro Industries Corporation ? if so, to what effect and what relief he is entitled to ?

(3) The respondent-Corporation raised the preliminary objection before the Labour Court, Chandigarh regarding the lack of jurisdiction. Both the parties led evidence. The Labour Court having found that the appellant was employed at the Branch Office of the respondent-Corporation at Tarn Taran and Phagwara (both places in Punjab) and that the retrenchment compensation having been paid to him at Tarn Taran only, the Chandigarh Administration is not the "appropriate Government" who could make reference under section 10(1) of the Act.

(4) The above mentioned award of the Labour Court was challenged by the appellant in Civil Writ Petition No. 4704 of 1989. The learned Single Judge,—*vide* the impugned judgment dated 17th August, 1983 dismissed the aforesaid Writ Petition holding that "there is no escape but to conclude that the situs of the employment where the worker was employed and the order of dismissal of his service, suspension or retrenchment was received would determine the 'appropriate Government' competent to make reference under section 10 and not Head Office of the company from where said order was issued." Hence, this Letters Patent Appeal.

(5) We have heard the learned Counsel for the parties.

(6) Shri Dinesh Kumar, learned counsel for the Appellant contended that the Head Office of the Respondent-Corporation is located in the Union Territory of Chandigarh and the power to appoint, terminate, dismiss, remove or suspend an employee of the Corporation is also exercised by the Head Office at Chandigarh. He has further emphasised that the order of termination of services of the Appellant dated 24th February, 1983 (Annexure P-1) was also passed and issued

by the Respondent-Corporation from its Head Office at Chandigarh though it was served upon the Appellant while he was posted at Tarn Taran. According to the learned counsel for the Appellant, the mere incidence of his posting at Tarn Taran where the order was served upon him or the payment of retrenchment compensation along with the order of retrenchment, which being a mandatory condition precedent in terms of Section 25-F of the Act, are of no consequence inasmuch as the "cause of action", which crystalised into an "industrial dispute", had actually arisen in Chandigarh only, therefore, the Union Territory of Chandigarh is the only "appropriate State Government" in terms of Section 2(a) (ii) of the Act for the purposes of making reference under Section 10(1) of the Act. He has further argued that even if the receipt of retrenchment order or payment of retrenchment compensation by the Appellant at Tarn Taran constitutes as part of the cause of action to raise an industrial dispute, it would at best be a case of concurrent jurisdiction exerciseable by the Government of Punjab and the Union Territory of Chandigarh and in such an eventuality, the Appellant was free to approach any one of the 'appropriate Government' for the reference of the industrial dispute in question.

(7) On the other hand, Shri Raman Mahajan, learned counsel for the Respondent-Corporation, while supporting the judgment of the learned Single Judge, has argued that the concept of "cause of action" or the "concurrent jurisdiction" are alien to the philosophy of the Act as provisions of the statute are silent in this regard, therefore, these principles cannot be relied upon for the purposes of tracing out the "appropriate Government" competent to make reference to an industrial dispute.

(8) There can hardly be any dispute that in relation to the industrial disputes concerning subjects envisaged in sub-section (i) of Section 2(a) of the Act, the Central Government alone is the "appropriate Government" for making reference to an "industrial dispute" and in relation to "any other industrial dispute", the State Government is the "appropriate government" as provided in sub-section (ii) of Section 2(a) of the Act. In cases where all the activities of an establishment are carried out within the territories of one State only, hardly any controversy will arise regarding the competence of the government of the said State to act as the "appropriate

government". However, the difficulties arise in cases where an employer has establishments in more than one State, like in the present case, where the Head Office of the Respondent-Corporation is situated within the Union Territory of Chandigarh but its branch offices are spread over in the State of Punjab. It is true that the Act does not define the "cause of action" nor does it indicate as to what factors will confer or determine jurisdiction of the "appropriate government" for making reference to an industrial dispute in case an employer is having establishments in more than one State. Absence of an explicit provision in the Act has given occasions to lay down guiding principles by the Hon'ble Supreme Court in certain cases, a brief reference to which is made hereinafter.

(9) In the case of **Lipton Limited** *versus* **Employees (1),** one of the points urged on behalf of the employer was that the Industrial Tribunal had no jurisdiction to make an award in respect of employees of the Delhi office who were employed outside the State of Delhi. However, all the workmen of the Delhi office, whether they worked in Delhi or not, received their salaries from the Delhi office; they were controlled from the Delhi office in the matter of leave, transfer, supervision etc. Repelling this contention their Lordships held that the Delhi State Government was the "appropriate Government" within the meaning of Section 2(a) of the Act relating to the dispute which arose between the employer and the Union and under Section 18 of the Act the award made by the Tribunal was binding on all persons employed in Delhi office.

(10) In **Indian Cable Co. Ltd., Calcutta** *versus* **Its Workmen (2),** the Hon'ble Supreme Court held as under :—

> "It is common ground that the dispute with which we are concerned is not one falling within the jurisdiction of the Central Government and that it is only the State Government that has the competence to make the reference. The point in controversy is as to which of the States has jurisdiction to do so. The Act contains no provisions bearing on this question, which must, consequently, be decided on the principles governing the

(1) AIR 1959 S.C. 676
(2) (1962) 1 L.L.J. 409

jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in **Lalbhai Tricumlal Mills, Ltd.** *versus* **Vin and others (3)** :—

"But what we are concerned with to decide is : where did the dispute substantially arise ? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a Court or tribunal would have a jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction."

In our opinion, these principles are applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Act."

(11) Their Lorships of the Supreme Court in **Workmen** *versus* **Shri Rangavilas Motors (Pvt.) Ltd. (3)**, held that in deciding the "Appropriate Government" with respect to an Industrial Dispute the apt question to ponder over is "where did the dispute arise." Ordinarily if workers are working in a separate establishment, the dispute would arise at that place. There should be some nexus between the dispute and the territory of the State and not between the industry and the territory of the State.

(12) In **Hindustan Aeronautic Ltd.** *versus* **Workmen, (4),** the Hon'ble Supreme Court after taking notice of the facts that the Barrackpore branch was, although under the control of the Bangalore Division of the Company, yet it was a separate branch engaged in an industry of repairs of aircrafts or the likes at Barrackpore; the workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there and in fact Barrackpore branch was an industry carried on by the company as a separate unit and in case of any disturbance of industrial peace at Barrackpore, where a considerable number of workmen were

(3) AIR 1967 S.C. 1040
(4) AIR 1975 S.C. 1737

working, the appropriate government concerned in the maintenance of the industrial peace was the West Bengal Government; the grievances of the workmen of Barrackpore were their own and the **cause of action in relation to the industrial dispute in question arose there** (emphasis applied), held that the reference, therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid.

(13) What emerges from the quoted case law is that like in civil law where occurrence of the cause of action can be determined by tracing out the bundle of facts which entitle the plaintiff the legal claims sought for, so would be the search for those factual events which constitute an "industrial dispute" capable of reference for adjudication by the appropriate government. Obviously, the facts and circumstances of each case would determine the existence or apprehension of an "industrial dispute" between the parties. Going into the facts of the presnet case, there can hardly be any dispute that the decision to terminate the services of the petitioner was taken by the Respondent Corporation at Chandigarh. The said decision culminated into passing of a formal termination order 24th February, 1983 (Annexure P-1) from the Head Office of the Respondent Corporation at Chandigarh. While deciding to retrench the Appellant from service, the decision to pay retrenchment compensation including the quantum thereof was also decided by the Head Office at Chandigarh. The Head Office of the Respondent Corporation is actually situated in Chandigarh and the competent authority to take the aforesaid decision with regard to discontinuation of employment of the petitioner is also located in Chandigarh only. Thus, all the ingredients of an "industrial dispute" in the context of section 2(k) of the Act took place in the Union Territory of Chandigarh only. It is merely an incidence of service that the Appellant was posted at Tarn Taran at the relevant time, therefore, the order was sent to him through the District Manager of the Respondent-Corporation at Tarn Taran. It is equally well settled that once an order of termination of services is passed and despatched, it becomes operative notwithstanding the formal receipt thereof by the affected employee. We have, therefore, no hesitation in our mind to hold that the "industrial dispute" in the present case had actually arisen at Chandigarh only.

(14) The next question which arises for consideration is as to whether the Chandigarh Administration was competent to make reference under section 10(1) of the Act or not. According to the

learned counsel for the Respondent, the Respondent Corporation is a Corporation established by the Government of Punjab and it does not fall within the ambit of Section 2(a)(i) of the Act and that the Union Territory of Chandigarh by virtue of not being a State Government, was incompetent to make reference under section 2(a)(ii) of the Act. In our view, the issue is no longer *res-integra*. A Division Bench of this Court in **Punjab Financial Corporation** *versus* **Union Territory, Chandigarh and others (5),** while dealing with somewhat similar situation, had held as under :—

> "3. So far as the first aspect of matter as highlighted by the learned counsel for the petitioner is concerned, the same, to my mind, stands conclusively answered by the latest pronouncement of the Supreme Court, reported as **Goa Sampling Employees Association** *versus* **General Superintendance Co. of India Pvt. Ltd.** AIR 1985 SC 357. While examining the argument that in relation to a Union Territory there is no State Government and the Central Government, if at all can be said to be one, is the only Government and in the absence of a State Government, the Central Government will also have all the powers of the State Government, and therefore, the Central Government would be the appropriate Government for the purpose of making a reference. Their Lordships, after analysing the various provisions of the Constitution posed the question : Would it be constitutionally correct to describe the Administration of Union Territory as State Government ?' and answered it in the following manner. It clearly transpires that the concept of State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an Administrator appointed by him. Administrator is the delegate of the President. His position is wholly different from that of a Governor of a State. Therefore, at any rate, the Administrator of a Union Territory does not qualify for the description of a State Government. Wherever the expression "State

(5) 1990 (2) PLR 327

Government" is used in relation to the Union Territory, the Central Government would be the State Government. Therefore, the Central Government is the appropriate Government. Clause (f) of Rule 2 of 1957 Rules framed under the Act further takes the matter beyond the pale of controversy when it says in relation to an industrial dispute in a Union Territory for which the appropriate Government is the Central Reference, reference to the Central Government or the Government of India shall be construed as reference to the Administrator of territory. It is thus abundantly clear that for purpose of these references, the Central Government was the State Government and in view of Section 8(b) (iii) of the Central Clauses Act, the Administrator of the Union Territory has to be taken to be the Central Government if his action was otherwise within the authority given to him.

4. The second aspect of the argument of the learned counsel for the petitioners that the Administrator has not acted within his authorisation as notified,—*vide* Annexure R. 1/1 appears to be equally meritless. The scope of the words 'any laws' does not need to be reduced to any State law or State Act, meaning thereby to exclude the Central Acts. 'Any law' would essentially mean all State and Central Acts. The only implication of notification is that all powers and functions under any law (as used in the ealier part of the notification) would henceforth, i.e., after the issuance of this notification be performed by the Administrator of the Union Territory. The expression 'any such law' in the latter part of the notification only refers to the law under which the Administrator acts or is supposed to act.

(15) Shri Raman Mahajan, learned counsel for the Respondent referred to the judgment of the Apex Court in **M/s Lipton Limited** *versus* **Their employees** *(supra)* to support the view taken by the learned Single Judge that the situs of the employment where the worker was employed and the order of dismissal of his service, suspension or retrenchment was received, would determine the "appropriate government" competent to make reference under Section 10 of the Act. We are unable to accept this contention.

The observations made by their Lordships to the effect that "the Industrial Tribunal had jurisdiction to adjudicate on the dispute between the Lipton Limited and its workmen of the Delhi office", cannot be construed as a dicta to mean that the Industrial Tribunal at Delhi could adjudicate the dispute between M/s Lipton Limited and those of its workmen only who were employed in the Delhi office and not the others posted outside Delhi.

(16) The Tribunal or Court established under the Industrial Disputes Act, 1947 have an onerous duty of speedy adjudication of disputes as the very foundation of this welfare legislation lies in providing social security measures for collective bargaining to the workers. The provisions of the Act used to be interpreted liberally to achieve the legislative intent. We are, therefore, also of the view that though the provisions of the Act are silent with respect to an occurrence of a "cause of action", yet the principles laid down for determining territorial jurisdiction of a Civil Court can ordinarily be borrowed and pressed into service for seeking reference to an 'industrial dispute'. Accordingly, we hold that even if part of cause of action has arisen in the territory of a State, its Government is competent to refer the dispute and if the facts culminating into occurrence of "cause of action" are scattered in the territories of more than one State, it is open to the aggrieved party to approach any one of the State Governments for getting the dispute referred.

(17) In view of what has been stated above, we are of the view that it is the occurrence of an "industrial dispute" or a part thereof within the territory of a state which shall empower the government of that state being the "appropriate government" to make reference of an industrial dispute and occurrence of an industrial dispute does not necessarily depend only upon the situs of the employment where the worker was employed or where the order of dismissal of his service, suspension or retrenchment is received. We are of the view that the question to determine as to who is the "appropriate government" always depends upon the facts and circumstances of each case and in the light of the undisputed facts in the present case, the union Territory of Chandigarh is certainly the "appropriate government" who could refer the industrial dispute for adjudication. That being so, the learned Single Judge as well as the Labour Court at Chandigarh fell in error in holding

that the Punjab Government was the only appropriate government who could refer the industrial dispute for adjudication in the present case. Accordingly, we allow this Appeal; set aside the award dated 14th March, 1989 (Annexure P-6) passed by the Labour Court, Chandigarh as also the judgment dated 17th August, 1993 passed by the learned Single Judge and hold that reference to the "industrial dispute" in the present case made by the Union Territory of Chandigarh is a valid reference made by the "appropriate government" in terms of Section 2(a)(ii) of the Act. The Labour Court at Chandigarh shall accordingly proceed to adjudicate the dispute on merits. It cannot be lost site that the Appellant was retrenched more than 20 years back and is languishing before one or the other forum at the threshold only of the industrial dispute raised by him. We, therefore, hope and trust that the Labour Court at Chandigarh will make all earnest efforts to decide this case on merits at the earliest but not later than six months. No order as to costs.

R.N.R.

Before G.S. Singhvi & Ajay Kumar Mittal, JJ.

GURPREET KAUR & OTHERS,—*Petitioners*

versus

PUNJAB TECHNICAL UNIVERSITY AND OTHERS,—*Respondents*

C.W.P. No. 17596 of 2003

9th February, 2004

Constitution of India, 1950—Arts. 226—Punjab Technical University Act, 1996—Ss. 14(8)(a)(d), 17 & 18—Academic Regulations, 2001—Chapter IV, paras 4, 7, 8 & 23—Admission to Bachelor of Computer Application Course—Part (i) of Cl. (iv) of para 23 of 2001 Regulations requires a student to clear re-appear papers in a maximum of 3 chances and part (ii) thereof requires to pass the entire course within a maximum period of 4-1/2 years—Whether part (ii) of Clause (iv) is ultra vires to part (i) and liable to be struck down—Held, no—Students failing to clear re-appear papers in second semester within maximum permissible chances—No provision in the Regulations for grant of mercy chance to clear re-appear papers—In the absence of statutory sanction, decision of the Academic Council of University in