

Prem Kakar

Vs

State of Haryana and Another

Civil Appeal No. 119 of 1975

(CJI A.N. Ray, Jaswant Singh JJ)

05.04.1976

JUDGMENT

RAY, J. -

1. This appeal by special leave turns on the question whether the Stage can be asked by a writ of mandamus to make a reference under Section 10(1) of the Industrial Disputes Act (hereinafter referred to as the Act).
2. The appellant was employed by the respondent company Hindustan Dowidat Tools Ltd. The services of the appellant were terminated on September 4, 1972. The appellant thereafter demanded reinstatement. The Conciliation Officer started conciliation proceedings under Section 12 of the Act. No settlement could be arrived at. The Conciliation Officer sent a report to the State Government under Section 12(4) of the Act. The State Government by letter dated June 7, 1973 informed the appellant that the Government had considered the appellant's case not fit for reference to the Labour Court for adjudication.
3. The Government in the letter stated as follows :

The Government have not found your case fit for adjudication to a Labour Court because you were working as an Electrical Foreman in this concern, which was a supervisory job and your wages were more than Rs. 500 per month. Therefore, your case is not covered by the definition of the term "Workman" given in the Industrial Disputes Act.
4. The appellant under Article 226 of the Constitution applied for a writ of mandamus directing the State to make a reference. The High Court dismissed the application.
5. The appellant contended that the question whether the appellant was a workman was disputed question of fact and law which could be decided only by an appropriate Labour Court. The appellant also submitted that if the dispute in question raises questions of law the appropriate Government should not give a final decision on the question. In short, the appellant's contention is that the issue whether the appellant is a workman or not could only be decided by the Labour Court and, therefore, reference should have been made.
6. Under Section 10 of the Act where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time refer the dispute, inter alia, to a National Tribunal for adjudication.

7. Section 12 of the Act deals with duties of Conciliation Officers. If the Conciliation Officer cannot arrive at a settlement of the dispute he sends a report to the appropriate Government. Under Section 12(5) of the Act if, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

8. This Court in *State of Madras v. C. P. Sarathy* (1953 SCR 334 : AIR 1953 SC 3 : (1953) 1 LLJ 174) and *State of Bombay v. K. P. Krishnan* ((1961) 1 SCR 227 : AIR 1960 SC 1223 : (1960) 2 LLJ 592) held that the order of the Government acting under Section 10(1) read with Section 12(5) of the Act is an administrative order and not a judicial or a quasi-judicial one.

9. In *Bombay Union of Journalists v. State of Bombay* ((1964) 6 SCR 22 : AIR 1964 SC 1617 : (1964) 1 LLJ 351) this Court said that in entertaining an application for a writ of mandamus against an order made by the appropriate Government under Section 10(1) read with Section 12(5) of the Act the Court does not sit in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the Government. If it appears that the reasons given show that the appropriate Government took into account any consideration irrelevant or foreign, then the Court may in a given case consider the case on a writ of mandamus.

10. In *K. P. Krishnan's* case the issues in dispute related to a claim of classification for specified employees and additional bonus and the sole ground on which the Government refused to refer the dispute for adjudication under Section 12(5) of the Act was that the employees had adopted go-slow tactics during the relevant year. The facts were that the company had nevertheless voluntarily paid three month's bonus for that year and the report of the Conciliation Officer was in favour of the employees. This Court held that the Government acted on irrelevant considerations and issued a writ of mandamus.

11. In the present case, the fact is that the Government found that the appellant was not a workman within the definition of workman in the Act, and, therefore, it was not a fit case for reference of adjudication.

12. The High Court rightly rejected the application. The appeal is, therefore, dismissed. Parties will pay and bear their own costs.

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