

Ram Avtar Sharma and Others

Vs

State of Haryana and Another

And

Surinder Kumar Sharma

Vs

Union of India and Others

Writ Petitions Nos. 16226-29 and 16418 of 1984

(Ranganath Misra, D. A. Desai JJ)

11.04.1985

ORDER

D. A. DESAI, J. -

1. In this group of writ petitions, the only point of law canvassed is whether the appropriate Government was justified in declining to make a reference of an industrial dispute arising out of the termination of service of each of the petitioners for adjudication to Industrial Tribunal/Labour Court under Section 10 of the Industrial Disputes Act, 1947.

2. Writ Petition Nos. 16226-29 of 1984 : Four petitioners were the workmen employed by the second respondent Hyderabad Asbestos Cement Production Ltd. ('employer' for short). The employer on April 11, 1983, issued charge-sheet in identical terms to all the four petitioners calling upon them to show cause within 48 hours of the receipt of the charge sheet as to why suitable disciplinary action should not be taken against each of them. The charge-sheet referred to an incident that occurred on April 11, 1983 at 8.15 a.m. between two groups of workers presumably owing loyalty to rival unions. The misconduct alleged against each petitioner was the one set out in Standing Order 20 (XIV) and 20 (XXV) of the Certified Standing Orders of the employer. Briefly stated, the charges were that the petitioners were guilty of fighting or riotous or disorderly behavior as also manhandling, beating etc. other workmen of the Company which acts were subversive of the discipline expected of the workmen of the Company. It is alleged that disciplinary enquiry followed and the enquiry officer submitted his report holding each of the petitioners guilty of the misconduct imputed against him. The Assistant Vice-President of the employer Company, after having gone through the report submitted by the enquiry officer and after perusal of the record of proceedings of enquiry and the connected document concurred with the findings recorded and reported by the enquiry officer holding the petitioners guilty of charges. After taking into consideration various relevant circumstances including the past record of the workmen, each of the petitioners was dismissed from the employment of the employer. It may be mentioned that during the pendency of the enquiry, all the petitioner had been put under suspension and while dismissing the petitioners, the period of suspension was treated as absence without leave. The petitioners raised an industrial

dispute as per notice dated May 12, 1984 calling upon the employer to reinstate them with back wages and treat them in service without a break. Copies of the notice were also served upon the authorities in the Labour Department of the Haryana Government. The Labour-cum-Conciliation Officer held conciliation proceedings and submitted a failure report on June 30, 1984. The second respondent, the State of Haryana, after taking into consideration the report of the Conciliation Officer, by its order dated September 1, 1984 declined to make a reference on the ground that "the Government does not consider the case to be fit for reference for adjudication to the Tribunal as it has been learnt that the services of the petitioners were terminated only after charges against them were proved in a domestic enquiry". The present writ petition is filed questioning the correctness and validity of this order.

3. Writ Petition No. 16418 of 1984 : Petitioner S. K. Sharma was, at the relevant time, employed as electrical fitter in the Diesel Shed at Tuglakabad. He was Assistant Secretary of the Uttar Railway Karamchhari Union, Diesel Shed Branch. He was also a member of the Canteen Committee. On August 2, 1981 the petitioner went to the Canteen, according to him, in his capacity as the member of the Canteen Committee, to enquire about the working of the Canteen. One Shri Gurbachan Singh, a foreman, marked the petitioner absent from duty and made an entry indicating that the petitioner had absented himself from duty and gave a direction that the petitioner should not be allowed to join duty without his permission. On the next day i.e. August 3, 1981, when the petitioner reported for duty, token was not issued to him by the timekeeper and he was informed that the token could not be issued to him until he brought a slip from foreman Shri Gurbachan Singh. As the latter was not on duty on that day, petitioner and 10 other workmen who too had been marked absent went to the residence of the foreman Shri Gurbachan Singh and enquired from him why they were not permitted to join duty. Shri Gurbachan Singh declined to have given any direction in this behalf and rebuked the petitioners from coming to his residence and accused them of misbehavior. The petitioner and several others then approached the general foreman who intervened and ordered the petitioner and others to join duty. Gurbachan Singh thereafter lodged a complaint with the third respondent, Senior Divisional Mechanical Engineer, alleging that the petitioner has misbehaved with him and had attempted to manhandle him. On receipt of this report from Gurbachan Singh, petitioner was placed under suspension on August 5, 1981, and was served with a charge-sheet. The petitioner denied the imputation. A disciplinary enquiry followed. Surprisingly the enquiry officer, Senior Loco Inspector Shri Joginder Lal, did not record the statement of Shri Gurbachan Singh who was the prime witness but examined two other witnesses who claimed to be the neighbours of the Shri Gurbachan Singh. The enquiry officer submitted his report dated October 24, 1981 holding the petitioner guilty of misconduct. On the basis of the report, respondent 4 exercising powers under Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 imposed punishment of removal from service on the petitioner. After an unsuccessful appeal to the Divisional Mechanical Engineer, the Uttar Railway Karamchhari Union espoused the cause of the petitioner and raised an industrial dispute contending that the order imposing punishment of removal from service was illegal and invalid. Central Labour Commissioner pursuant to the application from the Union dated May 27, 1982 held conciliation proceedings in which the respondents did not participate. Consequently, a failure report was submitted. The appropriate Government being the Central Government as per its order dated December 9, 1983 rejected the request for a reference under Section 10 of the Industrial Disputes Act, 1947 on the ground "that the penalty of removal from service was imposed on the workman on the basis of enquiry held in accordance with the procedure laid down in the Railway Servants (Discipline and Appeal) Rules, 1968 and that the action of the management in imposing the penalty of removal from service is neither mala fide nor unjustified and therefore the appropriate Government does not consider it necessary to refer the dispute to an

industrial Tribunal for adjudication". It is this order which is challenged in this writ petition.

4. The neat and narrow question of law raised in these two writ petitions can be formulated thus : whether the appropriate Government in each case was justified in refusing to make a reference on the grounds mentioned in each order more specifically that as the punishment was imposed after an enquiry held in accordance with the rules and on the report of the enquiry officer, it is not a fit case for making the reference. In other words, the question of law is what are the parameters of power of the appropriate Government under Section 10 while making or refusing to make a reference to an industrial tribunal for the adjudication of an industrial dispute.

5. The first question to be posed is whether while exercising the power conferred by Section 10 to refer an industrial dispute to a Tribunal for adjudication, the appropriate Government is discharging an administrative function or a quasi-judicial function. This is no more res integra. In *State of Madras v. C. P. Sarathy* (1953 SCR 334, 346 : AIR 1953 SC 53 : (1953) 1 LLJ 174 : 4 FJR 431) a Constitution Bench of this Court observed as under :

But, it must be remembered that in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination.

Explaining the ratio of the decision in *Sarathy* case (1953 SCR 334, 346 : AIR 1953 SC 53 : (1953) 1 LLJ 174 : 4 FJR 431), in *Western India Match Co. Ltd. v. Western India Match Co. Workers Union* ((1970) 3 SCR 370 : (1970) 1 SCC 225 : (1970) 2 LLJ 256) it was observed as under : (SCC p. 231, para 9)

In the *State of Madras v. C. P. Sarathy* (1953 SCR 334, 346 : AIR 1953 SC 53 : (1953) 1 LLJ 174 : 4 FJR 431) this Court held on construction of Section 10(1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible.

After referring to the earlier decisions on the subject in *Shambhu Nath Goyal v. Bank of Baroda, Jullundur* ((1978) 2 SCR 793 : (1978) 2 SCC 353 : 1978 SCC (L&S) 357) it was held that "in making a reference under Section 10(1), the appropriate Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character". Thus, there is a considerably body of judicial opinion that while exercising power of making a reference under Section 10(1), the appropriate Government performs an administrative act and not a judicial or quasi-judicial act.

6. The view that the while exercising power under Section 10(1), the Government performs administrative function can be supported by an alternative line of reasoning. Assuming that making or refusing to make a reference under Section 10(1) is a quasi-judicial function, there is bound to be

a conflict of jurisdiction if the reference is ultimately made. A quasi-judicial function is to some extent an adjudicatory function in a lis between two contending parties. The Government as an umpire, assuming that it is performing a quasi-judicial function when it proceeds to make a reference, would imply that the quasi-judicial determination of lis prima facie shows that one who raised the dispute has established merits of the dispute. The inference necessarily follows from the assumption that the function performed under Section 10(1) is a quasi-judicial function. Now by exercising power under Section 10, a reference is made to a Tribunal for adjudication and the Tribunal comes to the conclusion that there was no merits in the dispute, prima facie a conflict of the jurisdiction may emerge. Therefore the view that while exercising power under Section 10(1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond the pale of controversy.

7. Now if the Government performs an administrative act while either making or refusing to make a reference under Section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for the justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of the power it is liable to be questioned in exercise of the power of judicial review. In *State of Bombay v. K. P. Krishnan* ((1961) 1 SCR 227, 243 : AIR 1960 SC 1223 : (1960) 2 LLJ 592 : 19 FJR 61) it was held that a writ of mandamus would lie against the Government if the order passed by it under Section 10(1) is based or induced by reasons as given by the Government are extraneous, irrelevant and not germane to the determination. In such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. Maybe, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy.

8. Accordingly, it is necessary to examine the reasons given by the Government to ascertain whether the determination of the Government was based on relevant considerations or irrelevant, extraneous or considerations not germane to the determination.

9. Re : Writ Petition Nos. 16226-29 of 1984 : The reasons assigned by the Government for refusing to make a reference are to be culled out from the letter Annexure 'A' dated September 1, 1984 sent by the Joint Secretary, Haryana Government, Labour Department to the petitioners. It is stated in the letter that : "the Government does not consider your case to be fit for reference for adjudication, to the Tribunal as it has been learnt that your services were terminated only after charges against you were proved in a domestic enquiry". The assumption underlying the reasons assigned by the Government are that the enquiry was consistent with the rules and the Standing Orders, that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The last aspect has assumed considerable importance after the introduction of Section 11-A in the Industrial Disputes Act by Industrial Disputes (Amendment) Act, 1971 with effect from December 15, 1971. It confers powers on the Tribunal not only to examine the order of discharge or dismissal on merits as also to determine whether the punishment

was commensurate with the gravity of the misconduct charged. In other words, Section 11-A confers power on the Tribunal/Labour Court to examine the case of the workman whose service has been terminated either by discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of making a reference under Section 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2-A of the Act denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for the which the Government declined to make a reference under Section 10 are irrelevant, extraneous or not germane to the determination, it is well-settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. (See *Bombay Union of Journalists v. State of Bombay* ((1964) 6 SCR 22 : AIR 1964 SC 1617 : (1964) 1 LLJ 351 : 26 FJR 32).) It is equally well-settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. In this case a clear case for grant of writ of mandamus is made out.

10. Writ Petition No. 16418 of 1984 : The appropriate Government being the Central Government in this case declined to make a reference as per its order dated December 9, 1983 in which it is stated that "the action of the management in imposing on the workman penalty of removal from service on the basis of an enquiry and in accordance with the procedure laid down in the Railway Servants (Discipline and Appeal) Rules, 1968 is neither mala fide nor unjustified. The appropriate Government does not consider it necessary to refer the dispute to the Industrial Tribunal for adjudication". Ex facie it would appear that the Government acted on extraneous and irrelevant considerations and the reasons hereinbefore mentioned will mutatis mutandis apply in respect of the present order of the Government under challenge. Therefore for the same reasons, a writ of mandamus must be issued.

11. Accordingly all the writ petitions are allowed and the rule is made absolute in each case. Let a writ of mandamus be issued directing the appropriate Government in each case namely the State of Haryana in the first mentioned group of petitions and the Central Government in the second petition to reconsider its decision and to exercise powers under Section 10 on relevant and considerations germane to the decision. In other words, a clear case of reference under Section 10(1) in each case is made out. We order accordingly.

12. Respondent 2, Hyderabad, Asbestos Cement Products Limited in W.P. Nos. 16226-29 of 1984 shall pay the costs which is quantified at Rs. 2000 to the petitioners within the four weeks from today. There will be no order as to costs in W.P. No. 16418 of 1984.

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