SUPREME COURT OF INDIA

The Secretary Indian Tea Association

Vs.

Ajit Kumar Barat

(G Nanavati and S Phukan JJ.)

14.02.2000

JUDGMENT

S.N. PHUKAN, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 17th March, 1999 of the Calcutta High Court in appellate jurisdiction whereby order of the learned single Judge dated 24th July, 1998 passed in W.P. No. 155 of 1998 was affirmed. The learned single Judge directed the State Government to make reference under Industrial Disputes Act, 1947.

3. Briefly stated facts are as follows:

Respondent No. 1 was employed as Joint Secretary of Indian Tea Association-appellant. On 27th November, 1995, respondent No. 1 was dismissed from service for disobeying an order of transfer. He complained of his dismissal to Labour Commissioner, Government of West Bengal. Conciliation proceedings under Section 12 of the Industrial Disputes Act, 1947 (for short the Act) were held and appellant submitted its comments stating that respondent No. 1 was not a workman. A failure report dated 2nd July, 1997 was submitted by the Joint Labour Commissioner, recommending a reference, as according to him, the question whether respondent No. 1 was a workman required adjudication. The Government did not act, therefore, respondent No. 1 moved Calcutta High Court. The High Court directed the Government to take a decision under Section 12(5) of the Act within the time fixed. By order dated 14th July, 1998 the Government communicated its decision in writing wherein it regretted its inability to make a reference as respondent No. 1 was not a workman. Again respondent No. 1 moved the High Court against the said order of State Government. The learned single Judge directed the appropriate Government to make a reference as to whether the respondent No. 1 was a workman. The appeal filed by the appellant was dismissed by the impugned judgment and the State Government was directed to make an appropriate reference, keeping in view the nature of the dispute raised by respondent No. 1. Hence this appeal.

4. Mr. Dipankar Gupta, learned Counsel for the appellant relying on the decision of this Court in State of Madras v. C.P. Sarathy has urged that while discharging its function under Section 10(1) of

the Act, Government was performing an administrative act, therefore, Court could not have come to the finding that the refusal to refer the matter was bad. We quote below the relevant paragraph of the judgment:

This is, however, not to say that the Government will be justified in making a reference under Section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry, and it is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. 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. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute as defined in the act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

5. We may also refer to the decision of this Court in Prem Kakar v. State of Haryana . In that case a question arose whether an employee was a workman. The Government informed the workman that his case was not covered by the definition of the term "workman" under the Act, therefore, refused to make a reference. The workman approached the High Court for writ of mandamus which was dismissed. This Court was approached and the appeal was dismissed. In appeal it was contended before this Court that the question whether an employee was a workman is a disputed question of facts and law and, therefore, could only be decided by Labour Court on a reference and not by the State Government while exercising its powers under Section 12(5) of the Act, which was rejected. The Court also held that the order of the Government acting under Section 10(1) read with Section 12(5) of the Act passed after subjective satisfaction is an administrative order and not a judicial or a quasi-judicial one. It was also held that in entertaining a writ of mandamus against such an order the Court does not sit in appeal and is not entitled to consider the propriety or the satisfactory character of the reasons. However, if it appears from the reasons given in the order that the appropriate government has taken into account any consideration which is irrelevant or foreign, then the Court may in a given case consider the case of writ of mandamus,

6. In Sultan Singh v. State of Haryana , this Court held that an order issued under Section 10 of the Act is an administrative order and the Government is entitled to go into the question whether industrial dispute exists or is apprehended and it will be only a subjective satisfaction on the basis of material on record and being an administrative order no lis is involved.

This law on the point may briefly be summarized as follows:

1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial

dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quash-judicial one and the Court, therefore, cannot canvass the order 6f the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quail-judicial order;

3. An order made by the appropriate government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

7. We extract below the order of the State Government, which is speaking one:

I am directed to say that in terms of the Hon'ble High Court's order dated 24-11-1997 in Writ Petition No. 22878 (w) of 1997 in the case of Shri Ajit Kumar Barat v. State of West Bengal Government has examined the matter in details.

After examination, it reveals that you were first appointed as Assistant Secretary in the Indian Tea Association and subsequently promoted to the post of Joint Secretary. Besides the basic pay you are given child allowance, house rent subsidy, furnishing allowance. House maintenance allowance, Transport subsidy, Re-embracement of Fuel and Electricity charges. Entertainment expenses, Re-embracement of servant's wages, monthly club subscription. Leave Travel Allowance and Re-embracement of Hospitality Expenses, Your duties also included power of sanction of expenses on behalf of Indian Tea Association.

So your pay and perquisites and the status enjoyed by you in the Orgasnisation and also the power of sanction of expenses suggest that you were a part of the management. Hence you cannot be treated as a workman within the purview of the Industrial Disputes Act.

Government therefore, regrets its inability to refer your dispute to any Industrial Tribunal/Court under Section 12(5) of the Industrial Disputes Act, 1947.

8. The appropriate Government would be justified in making a reference under Section 10 of the Act, if it is satisfied on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and "industrial dispute" as per Clause (k) of Section 2 of the Act means, inter alia a dispute or difference between employers and employers, or between employers and workmen. Clause (s) of Section 2 of the Act defines "workman" but does not include any such person-

(i) and (ii)...

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. Before making a reference under Section 10 of the Act the appropriate Government has to form an opinion whether an employee Is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

10. In the present appeal we find that the State Government rightly approached the question whether respondent No. 1 was a workman. Unless this condition is satisfied no reference can be made.

11. From the order of the State Government we find that while deciding the question whether respondent No. 1 was a workman, it took Into consideration the salary and allowances of respondent No. 1 drawn at the relevant time and also the nature of work. Respondent No. 1 who has appeared in person did not dispute the salary and allowances etc. as indicated In the order of the Government but urged that his responsibilities were neither supervisory nor managerial in nature.

12. Mr. Gupta, learned senior counsel appearing for the appellant has drawn out attention to the circular dated 30th March; 1994 issued by the appellant-association. This circular indicates duties of respondent No. 1 who was functioning as a Joint Secretary at the relevant time and we find his duties were to deal with all legal matters and Court proceedings, labour and land laws and publications (Labour legislations Labour welfare). We also find from the records that respondent No. 1 had power to sanction expenses incurred in litigation by the appellant. On the above materials on record the State Government rightly formed the opinion that respondent No. 1 was not a workman.

13. Respondent No. 1 has not been able to show that while passing the above administrative order, State Government took into consideration any irrelevant or foreign matter. We, therefore, hold that the above administrative order was passed by the State Government after taking into consideration material available on record and it could not be faulted.

14. Mr. Barat has urged that the question whether he was a workman is a disputed question of fact and can be decided only by the Industrial Tribunal and not by the State Government. In this connection, he has placed reliance on a decision of this Court in Abad Dairy Dudh Vitran Kendra Sanchalak Mandal v. Abad Dairy (1993) 3 Lab LJ (Suppl) 1993. This Court observed as follows:

Having regard to the facts and voluminous evidence sought to be adduced by both parties, the question whether the appellants are workmen requires detailed investigation of facts. The issue requires detailed examination and can be satisfactorily adjudicated upon only by a Tribunal.

15. Thus, it appears in that case the question required detailed investigation in view of voluminous evidence sought to be adduced but it is not so in the case in hand. Therefore, the above decision is not relevant for our purpose. The ratio laid down by this Court in Prem Kakar AIR 1976 SC 1474 : 1976 Lab 1C 1028 (supra) squarely covers this appeal as it does not appear from the order that the State Government took into consideration any irrelevant or foreign material.

16. Drawing out attention to the advertisement issued by the appellant-association calling for application for the post of Assistant Secretary Mr. Barat has urged that this advertisement would show the nature of the work to be performed. In our opinion this advertisement could not help respondent No. 1 inasmuch as it was for the post of Assistant Secretary to which post respondent No. 1 was initially appointed but subsequently he was promoted to the post of Joint Secretary. That apart we are concerned with actual duties performed by respondent No. 1 at the time of his dismissal from service which we have already indicated and were also taken into account by the State Government.

17. Mr. Barat has further contended that his letter filed before the Conciliation Officer was not considered by the State Government. We may state here that the records were not placed by the State Government before the High Court but were made available by Ms. A. Subhashini before this Court. From the record we find that in the failure report the Conciliation Officer has indicated all the contentions raised by respondent No. 1 in his letter. Therefore, this contention has no force.

18. For the reasons stated above we hold that both the appellate Court and the learned single Judge of the High Court erred in law in issuing a mandamus directing the State Government to make an appropriate reference, therefore, the Judgment of the learned single Judge passed in writ petition No. 155 of 1998 and the judgment of the appellate Court are hereby set aside.

19. In the result we find merit in the present appeal and accordingly it is allowed. Considering the facts and circumstances of the case we direct the parties to bear their own costs.