

(1990) 11 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 2664 of 1987

A.N. Krishnamoorthy

APPELLANT

Vs

The Management of E.I.D. Parry (1) Ltd. Madras and Others

RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12(3)

Citation : (1990) 11 MAD CK 0084

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : T. Fenn Walter, for the Appellant; T.S. Gopalan for the 1st respt. and Mr. M. Govindarajan, Addl. Govt. Pleader for the 2nd and 3rd respt., for the Respondent

Judgement

Kanakaraj, J.—By G.O. Ms. No. 2049, Labour Department, dated 22.10.1986, the Government declined to refer the dispute raised on behalf of the petitioner herein on the basis that his non-employment is not justified. It is this Government order that is challenged in the writ petition. The facts of the case are as follows: The petitioner was employed as a stenographer in the first respondent's factory. The first respondent who was proposing to close down the Ammonia Unit and the Employees Union had raised an Industrial Dispute. On 18.7.1985, a settlement was arrived at under S.12(3) of the Industrial Disputes Act, 1947, in and by which a voluntary retirement scheme was introduced. A total of 293 workmen exercised their option to retire under the scheme. Actually only 218 workmen were relieved under the said scheme, and the petitioner is one of the workmen who had exercised the option and was relieved from the services of the first respondent with effect from 3rd August, 1985.

2. The contention of the petitioner is that though he had exercised his option on 22nd July, 1985, on the very next day, he wrote a letter to the General Manager that due to the persuasion and influence exerted on the petitioner he had exercised his option to retire voluntarily under the scheme. He made a specific

request to withdraw his option on 22.7.1985 which, according to him, was secured under the influence of threat, intimidation, coercion and much against his willingness and desire.

3. The fact that the petitioner had sent a letter withdrawing the option exercised by him is not seriously disputed in the counter affidavit filed by the first respondent. In the Government order declining to refer the dispute of alleged non-employment of the petitioner, the reasons are given as follows :

He sent his application through the trade union offering to retire voluntary and received a sum of Rs. 55,438.80 from the management by way of full and final statement of his claim and left the services of the establishment. The workman has not substantiated his claim that he subsequently withdrew his option to retire or his claim that he had been victimised for his trade union activities.

4. The question is whether the order declining to refer the dispute is proper or not, having regard to the recent trend in the interpretation of the power of the Government under S. 10 of the Industrial Disputes Act.

5. Learned counsel for the petitioner relies on the recent judgment reported in *M. Dorairajan v. Union of India*, represented by the Secretary, Ministry of Labour, New Delhi and another 1990 Writ L R 30. The Division bench says as follows:?

It is now well settled by a series of decisions of various High Courts in the country as well as the Apex Court that while exercising powers under S.10 (1) of the Industrial Disputes Act, the appropriate Government performs only an administrative act and not a judicial or quasi-judicial act. The fact that it has to form an opinion as to the actual existence of an industrial disputes as a preliminary step to the discharge of its functions does not make it any the less administrative in character. While deciding to make or refuse to make a reference the Government does not and cannot decide any disputed question of law or fact touching upon the merits of the dispute between the parties.

On the other hand, the learned counsel for the first respondent, says that unless the reasons given by the Government, are patently frivolous, the order of the Government (sic) cannot be set aside. He refers to the decision of the Division Bench reported in *Shaw Wallace and Co. Ltd. Vs. State of Tamil Nadu and Others*, . Similarly, the learned counsel for the first respondent also relies upon the judgment of the Division Bench in W.P. No. 34856 of 1988 dated 17.4.1990 *Workmen employed by Thiru Arooran Sugars Ltd., Vadapathimangalam*, represented by *Shaw Wallace and Co. Ltd. Vs. State of Tamil Nadu and Others*, .

6. No doubt in the latter case, an exactly similar question arose, and the Division Bench held that there was absolutely no material to hold that the voluntary retirement was due to compulsion. In fact, the following observations of the Division Bench are as follows: ?

Except for using a stock expression "Compulsion", nothing has been brought out as to the factors, which went to constitute such compulsion. In our view, the first

respondent was legitimate in declining to refer, because that could be referring a dispute which is patently frivolous.

7. I have already pointed out that in this case, it cannot be said that there are absolutely no materials to come to a prima facie conclusion that the petitioner had withdrawn his option to retire voluntarily under the scheme. No doubt the learned counsel for the first respondent relies on the fact that the payment of a sum of Rs. 55,438-80 p. on 3rd August, 1985 and the payment of the gratuity on 14th September, 1985 are circumstances which would go to show that the option was exercised voluntarily. I am however impressed by the letter dated 23rd July, 1985 wherein the petitioner has categorically withdrawn his option exercised on the previous day. The fact that the petitioner had received payments and therefore was availing the benefit of the voluntary retirement scheme and at the same time, seeking reference to the Labour court cannot be put against the workman because, a workman out of employment necessarily clutches at any payment that comes his way. On that ground I cannot minimise the value of the letter dated 23.7.1985. The court must also bear in mind that by making a reference to the Labour Court, the Government does not decided the issue. Ultimately it is for the Labour court to take evidence both oral and documentary and to come to a conclusion whether the non-employment was justified or not and whether the option was exercised voluntarily or not. Therefore, by merely directing the Government to refer the dispute to the Labour court the first respondent cannot be said to be prejudiced. We are only giving an opportunity to the worker to agitate his claim before a court. I am therefore inclined to hold that the order of the Government is vitiated and it is accordingly set aside, and I direct the Government to pass appropriate orders in accordance with the observations contained in the judgment. I make it clear that none of my observations can be taken note of by the Labour Court if it ultimately goes to the Labour Court and the Labour Court has to decide the issue independently on the basis of the evidence adduced before that court. This writ petition is allowed. No costs.