

(2009) 02 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 106 of 2006

Associate Stone Industries (Kota) Ltd.	APPELLANT
Vs	
Shakaut Ali and others	RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(4)

Citation : (2009) 2 WLN 462

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : J.K. Singhi and R.P. Singh, for the Appellant; Garima Wadhwa and P.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner-Company assailing order dated 18.10.2005 (Ann.2) passed by appropriate Government making reference for adjudication of industrial dispute.

Respondent No. 1 was driver with petitioner-Company whose services were terminated vide order dt. 23.7.2003, for which he raised grievance by way of application before Conciliations Officer and when no settlement could be arrived at between the parties, matter was sent to appropriate Government u/s 12(4) of Industrial Disputes Act, 1947 ("the Act"). However, appropriate Government declined to make reference on the premise that petitioner-Company has shown willingness to take the workman on duty, vide order dated 26.5.2004 (Ann.1.), which was challenged by respondent-workman by way. of CWP- 7263 /04 which was decided by this Court vide order dated 24.8.2005 with the direction to respondent-workman to make representation to the Government for re-opening of the case and passing appropriate orders after considering report of conciliation officer. However, it was observed that if such representation is made, appropriate Government at the same time may also consider and decide the same within four weeks by a reasoned order.

2. Respondent-workman made representation. It appears that appropriate Government has examined the matter afresh taking note of report of conciliation officer and other material duly supplied alongwith report, and finally referred industrial dispute for adjudication vide order dated 18.10.2005 (Ann.2).

3. Counsel for petitioner inter-alia submits that once there was an order Sated 26.5.2004 (Ann. 1) of rejection by appropriate Government, Second order dated 18.10.2005 (Ann. 2) of making reference is wholly arbitrary and is in violation of principles of natural justice as it could not have been passed without affording opportunity of hearing to the petitioner.

4. Counsel further submits that once this Court vide order dated 24.8.2005 directed appropriate Government to pass a reasoned order, but no reasons were assigned by appropriate Government while making Reference and in such Circumstances, such order is not legally sustainable and deserves to be set aside.

5. Per contra, while supporting the order of appropriate Government of flaking reference, Counsel for respondent-workman submits that no reasons are required to be assigned while making reference however if appropriate Government declines to make Reference, it is a statutory requirement u/s 12(5) of the Act to record reasons and communicate to the party concerned.

6. At the same time, Counsel further submits that there is no bar that once reference has been declined, the same could not have been considered afresh u/s 10 of the Act, under the statute, there is no bar to this effect. In support, Counsel placed reliance upon decision of this Court in M/s. Prakash Road Lines Ltd. v. State. 2005 (2) WLC (Raj.) 205 : 2005(3) LLN 1127.

7. I have considered contentions of Counsel for parties and with their assistance, perused material on record. As per section 10(1) of the Act, 1947, whenever appropriate Government is of the opinion that there is an industrial dispute exists or apprehends, it may, at any time, by order in writing, refer the dispute for adjudication. However, u/s 12(5) of the Act, on a consideration of report of conciliation Officer, u/s 12(4) appropriate Government on being satisfied that there is a case for reference to the Board, Labour Court, Tribunal or National Tribunal, as the case may be, it may make such reference for adjudication. But at the same time, if appropriate Government comes to the conclusion not to make reference, it certainly record reasons therefor and communicate to the parties concerned. It is further relevant to mention that there is no bar under Scheme of the Act, 1947 that application once rejected by appropriate Government for making reference, that ceases the right of appropriate Government to make reference at a later stage.

8. This very issue was considered by Apex Court in Sultan Singh Vs. State of Haryana and another, where question for consideration was as to whether State Government is under obligation to give opportunity of hearing to the employer before making reference on 2nd application and after taking note of rival consideration, Apex Court observed ad infra:

5. The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative order and so is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to the employer nor to consider his objections not to hear him before making a reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on second application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference. The previous decision of that Court relied on in the case at hand was wrongly decided.

9. In *M/s. Prakash Roadlines v. State* (supra) this Court (DB) observed ad infra:

11. In the present case, the State Government earlier refused to make the reference for adjudication vide its order dated 4th December, 1999 (Annexure 6 of the writ petition) but, on subsequent representation dated 23rd March, 2000 filed by respondent No. 3, the State Government referred the matter for adjudication to the Labour Court, vide its order dated 30th March. As per judgment of the Hon'ble Supreme Court as quoted above, it is clear that there was no need to give any notice to the appellant employer nor there was any need to hear him before making a reference by the State Government. Therefore, present case is squarely covered by the ratio of the judgment of the Hon'ble Supreme Court as referred above. After passing of the order dated 4.12.1999, there was a fresh representation dated 23rd March, 2000 therefore, fresh material was available before the State Government and as such, the order dated 30th March, 2000 making reference to Labour Court for adjudication was rightly passed by the State Government. Therefore, in view of the above, there is no merit in any of the submissions of the appellants.

10. A conjoint reading of section 10 & section 12(5) of the Act, depicts that on making an application for reference, it would be open to the State Government to form an opinion based on report of conciliation officer alongwith record made available, whether industrial dispute exists or apprehended and if it is affirmative, may make a reference to the appropriate authority and if it is otherwise, may decline to make a reference; and only on rejection thereof, the order must disclose reasons which needs to be communicated to the party concerned.

11. In *Sultan Singh v. State of Haryana* (supra), 2nd representation was held to be maintainable even if State Government has earlier refused to make a Reference for adjudication and the same could have been referred on subsequent facts brought for consideration. There was neither requirement to serve notice upon petitioner employer nor there was any requirement to hear him before Reference is made by appropriate Government. Even in instant case, this Court in earlier petition directed respondent No. 1 to make representation and taking note of report of conciliation officer alongwith record annexed thereto, which was furnished afresh u/s 12(4) of the Act, on being satisfied with material on record,

appropriate Government considered afresh and made reference vide order impugned.

12. The order impugned is administrative in nature and no lis has been decided; as much there was no need to issue any notice to the employer or to hear the employer before making a reference or refusing to make a reference and thus submission of Counsel for petitioner that they have not been provided an opportunity of hearing before passing order of Reference is bereft of merit.

13. As regards submission made by Counsel for petitioner that this Court while disposing of earlier petition observed and directed the appropriate Government to assign reasons, is of no substance for the reason that this Court directed appropriate Government to assign reasons and while in exercise of powers u/s 12(5) of the Act, statute requires appropriate Government to assign reasons only if it arrives at the conclusion not to make reference; it may assign reasons and may be communicated to the party concerned. But on subjective satisfaction of material on record, if appropriate Government arrives to the conclusion for making Reference, reasons are not required to support order of Reference. What has been observed by this Court has to be considered in consonance with requirement of section 12(5) of the Act.

14. Consequently, writ petition fails and is hereby dismissed. However, as informed industrial dispute relates to termination order dated 23.7.2003, it is expected from the Tribunal to decide the Reference expeditiously. No costs.