

(1986) 05 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2239 of 1983

Bhagwan Singh

APPELLANT

Vs

Hindustan Zinc Limited and Another

RESPONDENT

Date of Decision : 08-05-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1986) WLN 198

Hon'ble Judges : Ashok Kumar Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—The petitioner by this writ petition has challenged the order dated 3rd/5th January, 1979 (Anx. 2) and has sought a direction that it may be declared that the petitioner is in continuous service of the respondent No. 1 and the arrears of salary may be paid to him. In the alternative it has further been prayed that the order dated 17th March, 1982 may be quashed whereby the Central Government has refused to make a reference.

2. The petitioner was an employee of M/s Hindustan Zinc Ltd. The petitioner could not join his duties on account of illness, therefore his services were terminated on account of unauthorised absence by the employer. The matter was referred to the Conciliation Officer and the Conciliation Officer gave a failure report vide Annexure 3. The petitioner raised an industrial dispute and the respondent No. 2 refused to refer the matter to the Industrial Tribunal for its adjudication vide Annexure 1 dated 17th March, 1982. Thus, in this back ground the petitioner has challenged the order refusing to make reference to the Industrial Tribunal as well as the order of termination dated 3rd January, 1979 (Anx. 2).

3. The respondent has filed a reply and has taken the position that after terminating the services and failure report given by the Conciliation Officer the

petitioner was served with the charge sheet and enquiry was held and he has been found guilty for absence from duties. Thus, Mr. Parekh learned Counsel for the respondent has submitted that there is no warrant for interference with the order of termination of the petitioner because in the enquiry the petitioner was heard. Mr. Mridul, learned Counsel for the petitioner contended that since the order dated 3rd January, 1979 is absolutely void therefore this court should quash that order and subsequent post facto enquiry cannot validate that illegal and void order. I need not express any view on this subject that whether the employer can hold the post facto enquiry to validate the invalid order because of the fact that I find that the order passed by the respondent No. 2 declining to make reference is illegal. It is settled by the series of the decisions of their Lordships of the Supreme Court and the last one in the case of M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, wherein it has been clearly laid down that if the matter requires adjudication of issues then in that case the authorities should not enter into the dispute but only course for them is to refer the matter to the Tribunal for its adjudication. The order Annexure-1 dated 17th March, 1982 passed in this case reads as under:

^^ bl ea=ky; ds miZ;qDr fo"k; ds lela[;d Ik= fnukad 29 vDVwcj] 1981 ds vkxs eq>as ;g dgus dk funsZ"k gqv k gS fd dsfUnz; ljdkj bl fookn dsk U;k; fu.kZ;u ds fy, Hkstus dk bjknk ugh j[krh gS D;ksfd izcU/kra= us LFkk;h vkns" kks ds vuqlkj gh dk;Z fd;k gS vkSj vr% dkexkjks dh Isokvks dh lekfir nks"kiw.kZ ugh izrhr gksrh gS A^^

4. A perusal of this order would show that the reasons given for not making reference is absolutely laconic. The only reason given is that the Government does not like to refer the matter for its adjudication to the Tribunal because the management has decided the matter according to the Standing Orders. This is no reason for not referring the matter to the Tribunal, when the employee is making a grievance that his termination is wholly laconic and in serious violation of the principles of natural justice, it was incumbent for the respondent No. 2 to refer the matter for adjudication for the Industrial Tribunal. Their Lordships of the Supreme Court in the case of M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, observed as under:

While conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands it is to be understood as a rule that adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute exists or is apprehended" and then refer for adjudication on merits. The demarcated functions are (1) reference; (2) adjudication. When a reference is rejected on the grounds that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi-judicial Tribunal by an administrative authority namely the Appropriate Government. There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either

perverse or frivolous and do not merit a reference, Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government usurp the powers of the Tribunals for adjudication of valid disputes. To allow the Government to do so would be to render Sections 10 and 12(5) of the Industrial Disputes Act nugatory.

5. Thus, in the result I allow this writ petition and set aside order dated 17th March, 1983 (Anx-1) and the respondent No. 2 to reconsider the matter for reference to the Tribunal for its adjudication. This decision should be taken within two months from the date of the order.