
(1996) 07 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 4579 of 1995

Bholanath Majhi

APPELLANT

Vs

Government of Orissa and Another

RESPONDENT

Date of Decision : 22-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1999) 3 LLJ 1378 : (1996) 2 OLR 316

Hon'ble Judges : A. Pasayat, J;A. Deb, J

Bench : Division Bench

Advocate : R.K. Bose, for the Appellant; A.K. Mishra, S.K. Mishra, P.K. Mishra and D.P. Nanda, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The sole point that arises for consideration in this writ application is whether State Government was justified in refusing to refer a dispute for adjudication by the Industrial Tribunal on the ground that petitioner lacked requisite qualification for being entitled to promotion and therefore no industrial dispute existed. Action was taken in purported exercise of powers u/s 12(5) of the Industrial Disputes Act, 1947 (in short the "Act").

2. Petitioner lodged a grievance that though he was entitled to be promoted, the Executive Engineer, Jeypore Electrical Division, Jeypore (opp. party No. 2) illegally kept him out of zone of consideration. The Conciliation Officer-cum-Asst. Labour Officer, Jeypore submitted a failure report u/s 12(4) of the Act. On consideration of the same, State in Labour and Employment Department, by the impugned office memorandum dated January 12, 1995 (Annexure-2) refused to refer the matter for adjudication on the ground that no industrial dispute existed, since petitioner failed to pass in trade test which was required for promotional post.

3. According to Mr. R. K. Bose, learned counsel for petitioner that State

Government failed to exercise its jurisdiction conferred in law by prejudging the issue. The conclusions were not factually correct. Learned counsel for opp. party No. 2 submitted that State Government is not bound to make a reference and can weed out frivolous claims and disputes given colour of industrial dispute, and on being satisfied that dispute raised is not industrial dispute, can refuse to make a reference.

4. It is open to the State Government to take broad features into consideration while exercising jurisdiction u/s 10(1) of the Act. When the appropriate Government considers the question as to whether a reference should be made u/s 12(5), it has to act u/s 10(1) of the Act, and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4), the appropriate Government ultimately exercises its power u/s 10(1), subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and failure report has been made u/s 12(4). When the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider prima facie the merits of the dispute, and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. If dispute in question raises a question of law, appropriate Government should not purport to reach a final conclusion on the said question of law because that would normally lie within the jurisdiction of the Tribunal. Similarly on disputed questions of fact, appropriate Government cannot purport to reach final conclusions, for that against would be the province of the Tribunal. It cannot be laid down as a rule of general application that appropriate Government is precluded from considering even prima facie merits of dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10(1). A very limited jurisdiction to the State Government to examine patent, frivolous demand has to be conceded, but it has to be understood as a rule of adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits the appropriate Government to determine whether dispute exists or is apprehended, and then refer the matter for adjudication. Demarcated functions are (1) reference and (2) adjudication. There may be exceptional cases in which State Government may on proper examination of demand come to a conclusion

that demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of demand with a view to decline reference. Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. This position has been elaborately dealt with by Apex Court in Bombay Union of Journalists and Ors. v. The State of Bombay and Anr. 1964 I LLJ 351, M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, .

5. Judged in the background of legal position as elaborated by Apex Court, the impugned order cannot be maintained as Government has examined merits of disputed factual aspects. Accordingly, we set aside the office memorandum (Annexure-2) and direct the State Government to consider the matter afresh, keeping in view all relevant aspects.

The writ application is allowed to the extent indicated above. No costs.

A. Deb, J.

6. I agree.