
(2003) 07 JH CK 0133

In the Jharkhand High Court

Case No : Writ Petition (L) No. 3338 of 2001

Colliery Karamchari Sangh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12(5), 2

Citation : (2004) 1 JCR 341

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : R.S. Mazumdar, for the Appellant; A.K.Mehta and Sheela Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—In this writ application the petitioner prays for quashing the memo dated 4.6.1999 (Annexure-A), whereby it has been communicated that the Central Government has refused to refer the dispute for adjudication after consideration in terms of Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The petitioner by a communication dated 16.10.1998 made to the Assistant Labour Commissioner (C) sought to raise an industrial dispute regarding one Shri Raj Kumar Dhari on the grounds that, the actual date of birth of the workman is 5.10.1953, as per the "family horoscope"; that the workman has been requesting the management since a very long time for the correction of his date of birth which has been mentioned wrongly as 32 years in the service excerpt; that the management neither made any correction nor referred him to the Apex Medical Board for the assessment of his age.

3. The management in its communication dated 23.12.1998 made to the Assistant Labour Commissioner (C), Dhanbad, inter alia, contended that the date of birth/age of the workman is recorded as 32 years as on 17.10.1971 in

statutory form "B" register of the colliery, and that in the year 1987 service excerpt containing the date of birth etc. were issued to all employees of the company including the workman Shri Raj Kumar Dhari, inviting objections, if any, but he did not make any objection about entries rather he put his LTI as a token of acceptance and returned the same to the management, and that there is no variation in the date of birth of the workman recorded in different records of the company and therefore, the question of sending him to Medical Board for assessment of age did not arise, and that there is no provision to accept the date of birth on the basis of "Family Horoscope".

4. The conciliation having failed, the Assistant Labour Commissioner referred the records to the appropriate Government. The Government by its memo dated 4.6.1999 communicated its opinion formed u/s 12(5) of the Act to the effect that the workman is in employment since 1971, and as per report there is no discrepancy in the date of birth in the service records and, therefore, there is no justification for the demand of its correction or referring the matter to the Medical Board, at this stage and that the dispute is without any- basis. The transcription of the said reason is as follows :--

"Karmkar 1971 Se Karyarat Hai, Suchit Kiya Gaya Hai Ki Karmkar Ke Sewa Recardon Me Darj Janam Tareekh Me Koi Apwad Nahin Hai Atah Is Stage Per Sudhikaran Ki Mang Athwa Chikitsa Board Bheje Jane Ki Mang Ka Koi Auchttya Nahin hai. Vivad Niradhar Hai."

5. The petitioner has prayed for quashing the said memo dated 4.6.1999 and to direct the appropriate Government to refer the dispute to Industrial Tribunal for adjudication.

6. Learned Counsel for the petitioner relied on the decisions of the Hon'ble Supreme Court reported in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, ; Sharad Kumar Vs. Govt. of NCT of Delhi and Others, Learned counsel submitted, that the Government had no jurisdiction to adjudicate the dispute itself and it was bound to refer the dispute for adjudication. He further submitted that the jurisdiction of the Government is limited to "satisfying itself whether the dispute raised is an industrial dispute within the meaning of Section 2(k) of the Act, as has been held in Sharad Kumar's case (supra).

7. Learned counsel for the respondents supported the impugned order and submitted that the Central Government was perfectly justified in refusing to refer the dispute sought to be raised at this stage i.e. after about 11 years. After having accepted the entries in the service excerpts including the date of birth, in the year 1987 the dispute was sought to be raised in 1998 at the fag-end of the service when the workman was to attain the age of superannuation on 17.10.1999. He further pointed out that if the case of the workman is accepted, on the face of it he was just 18 years old at the time of his employment and not 32 years as recorded in statutory Form "B" register. He further submitted that on

the basis of a purported Horoscope, the workman is claiming 14 years more service. Counsel further argued that the Central Government is not required to act mechanically and as a post office. He argued that as per the provisions of Section 10(1) read with Section 12(5) of the Act the appropriate Government is required to form an opinion regarding existence or apprehension of an industrial dispute on consideration of the report referred to in Section 12(4) and on satisfaction that there is a case for reference, It may make such reference, and thus the Government was perfectly justified in refusing to refer the matter for the reasons that when the workman is in employment since 1971 and there is no discrepancy in the date of birth in the service records, there is no justification for correction of the same at this stage.

8. Learned counsel argued that the dispute sought to be raised is frivolous and in Telco Convoy Drivers Mazdoor Sangh case (supra) it was observed that on proper examination of demand, the Government can come to a conclusion that the demands are frivolous, do not merit a reference and the dispute is not valid, and that no strait-jacket formula has been laid down by the Hon"ble Supreme Court under which the appropriate Government is required to form its opinion.

He further pointed out that in Telco Convoy Drivers Mazdoor case (supra) the dispute was whether the convoy drivers were workmen and employees of Telco or not but while refusing to make a reference, the Government had adjudicated the dispute on merits. In the case of Sharad Kumar (supra) also there was a dispute whether Sharad Kumar was a workman or not but the reference was refused on the ground that the applicant was designated -and performing the duties as Area Sales Executive and as such he was not a workman. In the factual backdrop of the case the Hon"ble Supreme Court held that whether he was a workman or not, will depend on the nature of the duties he performed and in such a case determination of the question whether he was a workman or not was not easy when the Government was exercising the administrative jurisdiction.

Counsel pointed out that it was also held in Sharad Kumar's case that the jurisdiction vested in the appropriate Government to make a reference or refuse to do so is administrative in nature and depends on the opinion formed by it on perusal of the report and the materials received from the Conciliation Officer. Though the Government has a very limited jurisdiction to examine patent frivolous-ness of the demands, such question is required to be determined with reference to the facts and circumstances of the case and the materials on record and it is not possible to lay down any strait-jacket formula.

He further submitted that a decision is only an authority for what it actually decides and every judgment must be read as applicable to the particular facts of the case and no judgment can be read as if it is a statute. He submitted that the factual aspect of this case is absolutely different.

9. Learned counsel for the respondents relied on the decisions of the Hon"ble Supreme Court reported in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and

Others, ; The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, In Nedungadi Bank case (supra) the Hon''ble Supreme Court held that a dispute which is stale could not be the subject matter of reference u/s 10 of the Act, and whenever a workman raises some dispute it does not become an Industrial Dispute and the appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming it as an Industrial Dispute. However, if such administrative order does not take into consideration statutory requirements or travels outside that, then certainly it will be subject to judicial review.

In Secretary, Indian Tea Association's case (supra) the law on the point has been briefly summarized in paragraph 7 as follows-the Government would not be justified in making a reference without satisfying itself on the facts and circumstances brought to its notice and that the order of the Government u/s 10 is an administrative order and the Court, therefore, cannot closely see if there was material before the Government to support its conclusion and that such orders are made on the subjective satisfaction of the Government. However, if it appears from the reasons given that the Government took into account any irrelevant consideration, the Court may in a given case consider the case for a writ of mandamus and it will be open to a party to show that what was referred by the Government was not an industrial dispute. In the said case the Government refused to refer the dispute on the ground that the applicant could not be treated as workman in view of the facts placed before it.

10. In view of the submissions made on behalf of the parties, the only question is whether the Government acted within its jurisdiction, and whether it adjudicate the dispute itself? It is true that the Government should not enter into the merits of the dispute while exercising the powers u/s 10(1) read with 12(5) of the I.D. Act, but at the same time it is required to form a prima facie opinion whether the dispute deserves reference or not. It is in nobody's interest to indulge in un- necessary litigation. Admittedly the decision of the Government is an administrative one. A prima facie opinion has been formed on the basis of the materials available, that the disputes is stale and frivolous and it does not deserve reference at this stage.

11. After considering the entire matter, I am of the view that in the facts and circumstances of this case, the Government acted within its jurisdiction in refusing to refer the matter for adjudication to the Industrial Court/Tribunal and that the Government has not decided the dispute on merit. Only the circumstances, under which the dispute did not deserve reference, has been recorded in the order Impugned.

12. The writ petition is, accordingly, dismissed. However there will be no order as to costs.