

(1987) 09 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 1531 of 1983

C.V. Narayanam

APPELLANT

Vs

Jaya Auto Repairs Works and Others

RESPONDENT

Date of Decision : 01-09-1987

Acts Referred:

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

Citation : (1993) 3 LLJ 61

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : R.S. Kulkarni, for the Appellant; Shekar Naphade, for Respondent No. 1, H.L. Gokhale, Asstt. Govt. Pleader for Res. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Kantharia, J.—The petitioner, according to him, was working as a Clerk on a monthly salary of Rs. 1,400/- with the first respondent for about 19 years. His services were terminated by an order of discharge simpliciter dated 9th June, 1982 on the ground of loss of confidence. He was not given show cause notice or a charge-sheet nor was any enquiry held against him. He, therefore, served a notice of demand on the first respondent for withdrawing the termination order and reinstate him with continuity of service and other consequential benefits. Since his demand was not conceded to, he approached the office of the Labour Commissioner for taking up an industrial dispute on his behalf for his reinstatement contending that the termination order passed against him by the first respondent was illegal. The Assistant Commissioner of Labour, Bombay (the third respondent) vide his letter dated 8th March, 1982 informed the petitioner that he did not propose to intervene in the matter as the petitioner was working in an administrative capacity with the first respondent and that the matter may be treated as closed. It is the said order purporting to refuse making of a reference to the appropriate authority under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") that has been impugned by the petitioner in

this writ petition under Article 226 of the Constitution.

2. Mr. Naphade resisted this petition on behalf of the first respondent-employer contending that the allegations of misconduct against the petitioner were so grave that this is not a fit case in which the demand of the petitioner should be referred to Labour Court or Industrial Tribunal for adjudication. Mr. Naphade also urged that the Government has the necessary powers to come to its independent conclusion whether the petitioner is a "workman" or not. There is no dispute about this legal submission made by Mr. Naphade but the point is whether the Government can pass an order refusing to make a reference u/s 12(5) of the Act without assigning reasons. We do not find in the impugned order here that any acceptable reason(s) as to why the reference is not made to the appropriate authority under the Act was/were given. The impugned order is cryptic as all that it says is that because the petitioner was working in the administrative capacity that the third respondent did not propose to intervene in the matter, meaning he did not propose to make a reference as regards demand of the petitioner that he be reinstated with back wages and consequential benefits. The law on the point is now well settled. It was held by the Supreme Court in *Nirmal Singh Vs. State of Punjab and Others*, that the Labour Commissioner ought to have given reasons why he came to the conclusion that the appellant was not a workman within the meaning of Section 2(s) of the Act and that he only stated that the post held by the appellant did not fall "within the category of workman". The Supreme Court further held that the Deputy Commissioner of Labour had not given any reasons to justify his conclusions. In other words, the Assistant Commissioner of Labour in our case should have given reasons as to why he was of the opinion that the petitioner herein was not a workman. It was not enough to say that he was working in administrative capacity. The impugned order, therefore, suffers from errors apparent on the face of the record and as such the same has got to be set aside.

3. Then, this Court in *Krishna Babu Ghadigaonkar & etc. v. State of Mah. And Ors.* 1986 L.I.C. 1664 held:

"The powers vested in the Government u/s 12(5) of the Act to make a reference are discretionary. But when the Government chooses not to make a reference, it has to record reasons for not doing so and communicate the same to the parties concerned. This is a mandatory duty of the Government."

It was further held:

"While exercising such powers the Government should be slow in declining to make a reference because in doing so, the Government attempts to usurp the powers of the Labour Court or Industrial Tribunal in going into the merits of the matter. It is only when the Government comes to the conclusion that the claims made by the workmen were perverse or frivolous or bogus or were inordinately delayed that the Government may exercise its discretion and refuse to make a reference. In such cases Government is expected to exercise its discretion

properly and assign acceptable reasons for its decision. In view of the introduction of Section 11-A, which gives powers to the Labour Courts and Industrial Tribunals to give appropriate relief in the event of discharge or dismissal of the workmen it is all the more incumbent upon the Government to make references in-cases like the present ones and not take away the powers of the judicial authorities by refusing to make references."

4. Mr. Naphade submits that in case reference is ordered to be made, the respondent No. 1 should be at liberty to raise all the contentions about the alleged misconduct of the petitioner in the Labour Court or the Industrial Tribunal, as the case may be. There is no need to say that respondent No. 1 shall be at liberty to raise such contentions because law does not prohibit them from doing so. It will be for the Labour Court or the Industrial Tribunal to appreciate any contention that may be raised on behalf of the first respondent.

5. The High Court can direct respondent Nos.2 and 3 to make a reference to the appropriate authority or forum u/s 12(5) of the Act in view of the law laid down by the Supreme Court, this Court and the Gujarat High Court in *Sankari Cement Alai Thozhllalar Munnetra Sangam v. Government of Tamil Nadu* and *Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another*, , *Nirmal Singh Vs. State of Punjab and Others*, , *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, , *Rohinton P. Daruwalla v. Dy. Commissioner of Labour (Conciliation) Bombay* 1985 1 C.L.R. 126 (Bom.) and *Suresh Shantaram Joshi Vs. Regional Manager Bank of Maharashtra Baroda and Another*,

6. In the result, this petition succeeds and the same is allowed. The impugned order passed by the third respondent on 8th March, 1982 refusing to make a reference in the matter of a dispute raised by the petitioner is quashed and set aside. I direct that the second respondent shall refer the dispute raised by the petitioner to the appropriate Labour Court or Industrial Tribunal u/s 10(1) read with Section 12(5) of the Act for proper adjudication within a period of 15 days of the receipt of the writ.

7. Rule is accordingly made absolute but with no order as to costs.