

(1988) 10 BOM CK 0037
In the Bombay High Court
Case No : Writ Petition No. 287 of 1988

Dina Naik and Another	Vs	APPELLANT
Kadamba Transport Corpn. Ltd. and Another		RESPONDENT

Date of Decision : 31-10-1988

Acts Referred:

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

Citation : (1989) 58 FLR 807 : (1995) 3 LLJ 13

Hon'ble Judges : G.F. Couto, J;G.D. Kamat, J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; S.D. Desai, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Couto, J.—The petitioners challenge in this writ petition under Article 226 of the Constitution of India, the decision of the Government not to refer the dispute raised by the first petitioner to the Industrial : Tribunal, communicated by letter dated 11th August, 1987 of the Under Secretary, Industries and Labour.

2. Petitioner No. I was in the service of the first respondent, discharging duties as a driver. By an order bearing number KTC/T /83-84/880, issued by the depot manager of the first respondent, he was suspended from service on the ground that he had participated in an illegal strike, with effect from 15th April, 1984, and had, thereafter, indulged in various acts of violence. It was further stated in the said order that a detailed charge-sheet would be issued. Accordingly, a charge-sheet dated 14th June, 1984, was issued to the petitioner whereby some acts were imputed to him. The petitioner filed his reply, and thereafter, an inquiry was held, and ultimately, the general manager of the first respondent issued an order of dismissal dated 17th February, 1986. The first petitioner, being aggrieved, filed an appeal against the dismissal order which was dismissed. Thereafter, an industrial dispute was raised and the Assistant Labour Commissioner, acting as Conciliation Officer, initiated conciliation proceedings under the Industrial

Disputes Act, 1947. The conciliation proceedings failed, and accordingly, the Assistant Labour Commissioner submitted his failure report dated 13th July, 1987, to the Labour Secretary. It appears that the matter was considered by the Government, and ultimately, a decision was taken not to refer the dispute to the Industrial Tribunal for adjudication. This decision was communicated to the first petitioner by the impugned letter dated 11th August, 1987.

3. Mr. M.S. Sonak, learned counsel appearing for the petitioners, contends before us that the impugned order does not disclose any reasons as to why the Government has decided not to refer the dispute to the Industrial Tribunal. He submits that this was necessary, and, therefore, in the absence of any reasons for the decision, *ex facie*, the impugned order, is to be quashed and set aside. He further submitted that an industrial dispute clearly exists and was raised and therefore, the Government had necessarily to make the reference, especially when it is not for the Government to adjudicate such dispute. The jurisdiction to do so is, in fact, exclusively vested in the Industrial Tribunal. Learned counsel finally submitted that instead of quashing the aforesaid decision of the Government and remanding the matter back to the Government for a fresh decision, this Court should order the reference directly, since otherwise, there will be only a waste of time.

The impugned letter reads as under:

"I am directed to refer to the industrial dispute on the above subject, and to inform you that the Government has decided not to refer the dispute to the Industrial Tribunal for adjudication as the services of workman have been terminated for proved misconduct".

5. The aforesaid letter, speaks by itself and it is not necessary for us to elaborate much, since it is clear that no sound and specific reasons were given by the Government to refuse to make the reference. The mere statement that it was found that the services of the workman had been terminated for proved misconduct does not amount to reasons, and in any event, may, at the most, indicate that the Government had gone into the merits of the case and adjudicated the dispute on merits. For this, the Government definitely, has no jurisdiction, which is vested by law in the Industrial Tribunal.

6. This being so, it is clear that the impugned order is liable to be quashed and set aside and the matter to be remanded to the Government to be decided again, and in case no reference is made, to give reasons therefor.

7. We already mentioned that Mr. Sonak urged that the remand of the matter to the Government will constitute more waste of lime, since in a similar case, the Government had once again refused to make reference, after the case was remanded by this Court for a fresh decision. We have no sufficient data to accept the above submission of Mr. Sonak, and, therefore, we think that, in the facts of this case, a direction to make the reference as sought by the petitioners, is not justified.

8. The result, therefore, is that this petition succeeds, and consequently, the rule is made absolute in terms of prayer (a) and the matter is remanded to the Government to reconsider the matter and to dispose it of within one month from today. There will be no order as to costs, in the circumstances of the case.