

(1990) 06 CAL CK 0025
In the Calcutta High Court
Case No : Matter No. 146 of 1990

Durgapur Projects Sramik Union and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 05-06-1990

Acts Referred:

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

Citation : 94 CWN 1055 : (1991) 62 FLR 610 : (1993) 2 ILR (Cal) 19 : (1995) 3 LLJ 84

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kalyanmoy Ganguli, J.—The subject matter of challenge in this application under Article 226 of the Constitution of India is an order passed by the Assistant Secretary, Government of West Bengal, Labour Department dated January 11, 1990 communicating to the petitioners the inadvisability of referring the dispute to an Industrial Tribunal.

2. No one appears to oppose this application, nor is there any affidavit-in-opposition on record. The short case of the petitioners is that they have raised certain disputes with the appropriate Conciliation Officer regarding the reversion of a particular workman to the lower post of Sramik for three years.

3. It is stated in para 10 of the writ petition that the Conciliation Officer being the respondent No. 6 investigated into the matter and tried to bring about a settlement of the dispute, but no settlement could be arrived at by him. As a result the conciliation failed and a Failure Report under Sub-section (4) of Section 12 of the Industrial Disputes Act, 1947 was made by the respondent No. 6. The said report states that there is scope of further investigation in the matter and there should be some adjudication. The Conciliation Officer also suggested the proposed issues to be referred to the appropriate Tribunal or Labour Court as the case may be. Whether the Conciliation Officer can propose such issues may be a

matter of opinion, but at least it appears that the Conciliation Officer thought that the matter should be considered by the Appropriate Government regarding the making of a reference before the appropriate Forum.

4. The impugned order merely states that "on such examination it appears that the dispute need not be referred to Industrial Tribunal".

5. Sub-section (5) of Section 12 of the Industrial Disputes Act, 1947, inter alia provides that where the Appropriate Government does not make a reference, it shall record and communicate to the parties concerned, its reasons therefore. In the order impugned in the application, no such reason has been disclosed for which the Appropriate Government did not choose to refer the matter to the appropriate Forum. In the circumstances the order impugned cannot be sustained and is hereby set aside. The Rule is made absolute.

6. Let a writ in the nature of Mandamus issue accordingly. The appropriate authority is directed to reconsider the matter in accordance with law within five weeks from the date of communication of this dictated order.

7. There will, however, be no order as to costs.

All parties to act on a Xerox signed copy of this dictated order to be supplied to the parties on the usual undertaking.