

(1958) 09 BOM CK 0013

In the Bombay High Court

Case No : O.C.J. Appeal No. 58 of 1958 and Miscellaneous Application No. 383 of 1957

Engineering Staff Union

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 05-09-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 12, 12(5)

Citation : AIR 1959 Bom 390 : (1959) 61 BOMLR 298 : (1959) ILR (Bom) 1585

Hon'ble Judges : Chagla, C.J.; S.T. Desai, J

Bench : Division Bench

Advocate : N.V. Phadke and N.C. Bhandare, for the Appellant; A.G. and R.J. Joshi, for the Respondent

Judgement

Chagla, C.J.—This appeal raises some important questions as to the interpretation of Section 12(5) of the Industrial Disputes Act, and we have listened to a very able argument from Mr. Phadke about the manner in which that section should be construed. It appears that the first appellant which is a union of workers who were employed in the second respondent company made certain demands on 27-3-1956 and as these demands were not accepted by the second respondent company, an application was made to the Conciliation Officer on 6-4-1956. After some preliminary discussions between May and September 1956 conciliation proceedings commenced and ultimately, as unfortunately so often happens in labour disputes, they failed. The Conciliation Officer made a report u/s 12 on 2-4-1957. On the 30th of July 1957 Government referred to adjudication certain items in the disputes. But they refused to refer certain other items and on 14-8-1957 the Government communicated to the parties the reasons for their refusal. Now, the items which the Government refused to refer were ten. They dealt with pay scales, confirmation, provident fund, additional gratuity, leave, overtime payment, uniforms, allowance, standing orders and the case the one Mr. Ferns. On receiving the intimation, the first appellant and the

second appellant, who is an employee of the second respondent company, presented this petition for a writ of mandamus to compel the Government of refer thee matters for adjudication. Mr. Justice K.T. Desai issued a limited Writ of Mandamus calling upon the Government to reconsider their decision with regard to the question of provident fund and sick leave. With regard to the rest of the matters, he held that it was not open to the court to interfere with the decision arrived at by the Government. It is against this decision that this appeal is preferred.

2. Now, before we go to the merits of the matter, it is necessary to look at the section and do consider what is the obligation of Government under that section. The section came up for consideration in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, , and in that judgment we pointed out that the expression "may" referred to in Section 12 refers to a duty imposed upon Government and that, although the Government undoubtedly has been given the power to make a reference, that power had been coupled with a duty and the duty was that if on a perusal of the report Government was satisfied that there was a case for reference, the duty imposed upon it clearly arose and the Government could not refuse to discharge that duty. We also pointed out that the next part of Sub-section (5) made it obligatory open Government, when it did not make a reference, to regard and communicate to the parties concerned its reasons therefor. We were at pains to observe that it was perfectly true that the reasons given by the Government were not justiciable in the sense that the Court would not consider the weight or value or the quality or even the adequacy of the reasons given by the Government; but we pointed out that it was equally clear that the reasons which the Government had to give under this Sub-section were reasons connected with the perusal of the report and with Government not being satisfied that there was a case for reference. It was observed that it was because Government was not satisfied that there was a case for reference that the duty to refer did not arise and what the Legislature required was that Government must give reasons why it was not satisfied that there was a case for reference. It was under these circumstances that we came to the conclusion that the reasons must be connected with the failure on the part of the Government to be satisfied that there was no case for reference. We, therefore, decided what our power in this case by observing that it was equally clear that if the reasons had no connection, no bearing and no relevance to this question, then they were not reasons at all contemplated by Sub-section (5) and if they were not reasons contemplated by Sub-section (5), then it would be open to the Court to ask Government to give proper reasons which the law required by Sub-section (5). One further observation may be noted:

"A reason which is not germane to the industrial dispute or is not connected with the industrial dispute would obviously not be the reason contemplated by Section 12(5)."

3. Now, this matter has been further elaborated in this case by Mr. Phadke and

his first contention is that it is not open to Government to refuse to refer a matter by deciding the matter themselves. According to him, it is only in a limited class of cases that Government could exercise its powers of not referring a matter for adjudication; and he contends that to the extent that refusal to refer is connected with the merits of the dispute, it is only when the Government comes to the conclusion that the demands made by the workers are frivolous or they are such as to reasonable Tribunal could possibly entertain, that Government can refuse to refer the matter for adjudication. Therefore, according to Mr. Phadke, if the reason given by Government suggests that in exercising their power, they have considered the merits of the matter and have satisfied themselves that on merits the workers had no case, then they are giving a reason which is not a reason contemplated by Sub-section (5). Mr. Phadke uses a rather impressive expression that a distinction must be drawn between deciding a dispute and deciding whether a dispute should be referred to arbitration; and according to him the power of Government is merely to decide whether the dispute should be referred and not to decide the dispute itself. According to him, the Legislature has set up competent Tribunals to decide disputes between the workers and the employers and under Sub-section (5) of Section 12, it is not the function of the Government to arrogate to themselves the power of industrial Tribunals. Now, in considering this matter, we must not overlook the important object of this legislation and that object is to maintain peace in industry and to bring about good and friendly relations between employers and employees. Section 12 comes into operation only after there is a failure in the conciliation proceedings and if Mr. Phadke's contention were to be accepted, the result would be obvious that however intractable the attitude taken up by the workers may be in the conciliation proceedings, when these proceedings fail by reason of that intractability, the Government was bound to refer the dispute for adjudication and it did not have the power to consider whether the offer made by the employer in the conciliation proceedings was a fair and reasonable offer or whether the demands made by the employees were unreasonable demands. To take that view of the matter would be to make the provisions of Section 12 entirely nugatory. It is true, as against pointed out by Mr. Phadke, that under the Industrial Disputes Act, the Government may itself be an employer and Mr. Phadke says that to assume that the Government has the power to go into the merits of a dispute would lead to serious prejudice being caused to the workers when the dispute is between the workers on the one hand and the Government as the employer on the other hand. Now, the fallacy underlying this argument is that the "appropriate Government" referred to in Section 12(5) is not the Government which is acting as an employer in a particular case. That Government is the executive power of the State and when the Legislature entrusts certain power to Government it does so in the hope and expectation that power would be exercised in the interest of the people at large. When Government is functioning u/s 12(5) it is not functioning in the interest of employers or of employees. It is functioning in the interest of industrial peace and in order to bring about a fair and equitable settlement in the dispute

between the parties. Therefore, we refuse to assume that in any dispute even in a dispute to which Government as employer is a party Government would not act with that sense of duty and responsibility which the Legislature required of it. It would be improper and in our opinion contrary to the plain language of the section to cut down the power of Government in the manner suggested by Mr. Phadke. It is open to government and indeed it may be the duty of Government to consider in each case whether conciliation has failed and whether the demands of the workers are such as required adjudication. NOT only when the demands are frivolous such as reasonable people would not put forward but even if they are not justified, even if they are not appropriate in the context of the times or in the context of financial conditions, it would be open to Government not to refer the disputes to adjudication. To suggest that in any decision of Government, the element of decision should be absent is to make Section 12(5) entirely nugatory. Even in the case given by Mr. Phadke, if Government were to come to the conclusion that certain demands were wholly unreasonable or frivolous, even in that conclusion there would be inevitably an element of decision. In this connection, question arises whether the only material which the Government is entitled to consider u/s 12(5) is the report made by the Conciliation Officer. the language of the sub-section is:

"If on a consideration of the report referred to in Sub-section (4) the appropriate Government is satisfied that there is a case for reference."

What is made obligatory is the consideration of the report of the Conciliation Officer. But the section does not provide that the satisfaction ultimately required by the Government is a satisfaction that can only be based upon the report of the Conciliation Officer. It would, therefore, be erroneous to suggest that it would not be open to Government to rely on other materials, other facts, other statistics other than those which appear in the report of the Conciliation Officer. All that is relevant and germane to the statutory satisfaction can be availed of by the Government in coming to its conclusion. The satisfaction that the Government has got to arrive at is not judicial or quasi-judicial Act. It does not call for any judicial process, although undoubtedly it would be more satisfactory if Government were to discuss various matters in the presence of both the parties before it come to a particular conclusion. But the law does not cast any obligation upon the Government to do so and the very fact that the Legislature has left the matter to the subjective satisfaction of Government clearly shows that any idea or suggestion of judicial process is excluded.

4. Then, the next question that we have to consider is what is the nature of the reasons which the Government has to record and communicate to the parties under Sub-section (5) when it does not make a reference. Now, in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, we laid down that the reasons contemplated under this sub-section were reasons which must be germane to the issue before the Government. It must be relevant to the industrial dispute and to the demands made by the workers, to the answer given

by the employer and all matters with which, in substance, the Conciliation Officer was concerned. Therefore, we can straightway exclude one possible reason from the category of the statutory reasons referred to in Section 12(5) and the reason is the reason which we defined and excluded in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, . Therefore, when reasons are given and the Court is considering those reasons, if the reasons, disclose an extraneous matter taken into consideration by the Government, or if they disclose a failure on the part of the Government to take into consideration any relevant factory required by law, undoubtedly the Court would say that these are not the reasons contemplated by the statute. Now, it is obligatory upon the Government to consider the report of the Conciliation Officer. If Government were to state in its reasons that it has not taken that report into consideration, obviously the reason would be bad; equally so as laid down in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, , if the Government takes into consideration the conduct of a worker in deciding whether he is entitled to a bonus or any other circumstances which is foreign to any determination as to the question of the right of a worker to get bonus. But Mr. Phadke has contended for a much wider obligation being cast upon the Government and what he says is that reasons should not be conclusions of fact or expressions of opinion. They should disclose facts and circumstances on the basis of which the conclusion is arrived at. Now, this test would be perfectly sound if the reasons which the Government has to give were subject to judicial review or subject to judicial correction. As we pointed in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, , it is not for this court to consider the value or quality or even the inadequacy of these reasons and this court cannot constitute itself a court of appeal from the decision of the Government. The very limited jurisdiction that the court has to exercise is to compel Government to give proper reasons if the reasons give by the Government are not reasons which fall within the ambit of Section 12(5). It is true that it would not be sufficient for Government merely to assert its ipse dixit and to say that we are not satisfied that a reference should be made. That would be no reason at all. The reason must disclose the mental process which the resulted in Government not being satisfied. The court would not be concerned with how that mental process worked or how the conclusion was arrived at. But if the conclusion is germane to the failure on the part of the Government to be satisfied, then the court cannot ask the Government, as it were, to give particulars for the reasons give so that the particulars could be considered and investigated by the Court. Mr. Phadke referred to a legislation, which is not strictly in *pari materia* but which has some bearing on the question which we are considering, which is well known or notorious whichever way you call it, the Preventive Detention Act. What Mr. Phadke says is that under that law there is an obligation upon the detaining authority to furnish grounds and this court very early in the history of that legislation held that it was incumbent upon the Government to give particulars in respect of those grounds. Now, the reason for that decision it obvious. The reason was that legislation gave a statutory right to the detenu to make a representation to the Government against his detention

after he had received the grounds and what we said was that if a statutory right of making a representation was given, that should be considered to be an effective right and that right could not be effective if the grounds given were vague and did not contain necessary particulars. Now, applying that principle, if Section 12(5) had given a right to the parties to make a representation to Government against the reasons given by it for not making a reference, then undoubtedly we would have told the Government to give particulars so that right could be effectively exercised. No such right is given nor is there any right of appeal or review provided against the decision. But says Mr. Phadke there is always the jurisdiction of this Court under the Constitution under Articles. 226 and 227. But before a party can invoke the jurisdiction of this court, he must satisfy us that there is any obligation upon the Government to give particulars, which obligation must be found in the statute itself. If we were to accept Mr. Phadke's argument, then really we would be submitting the reasons to be given by the Government u/s 12(5) to judicial scrutiny and, as already pointed out earlier that was not the intention of the Legislature. It may then be asked: why is it then that law requires the Government to give reason? If they are no subject to judicial scrutiny, if no particulars need be given, if Government can go into the merits of the matter; why provide for something which is so pale and ineffective in its potentialities. The reason for this provision is obvious and, as we shall presently point out, in a well-known House of Lord's decision it has been stated that the object of the Legislature of providing for Government giving reasons is to ensure that Government will act with a sense of responsibility. A mere satisfaction without giving reasons is apt to be abused. But when Government has to give reasons, it would apply a much closer mind to the question because otherwise it may not be easy for the Government to give reasons for the decision it has come to. The further reason for making this provision is that reasons given by Government can be subjected to public scrutiny and public criticism and no Government - surely not a democratic Government-would ever take the risk of giving a reason which would be open to public criticism and even condemnation.

5. Now, there are two decisions both very interesting to which reference has been made by Mr. Phadke. The first is a decision of the House of Lords reported in *J.D. Allcroft v. Lord Bishop of London*, 1891 AC 666. That case arose under the Public Worship Regulation Act, 1874 which provided for a representation to be sent to the Bishop of the diocese with a view that he should take specified steps to have the matter of the representation tried in one of the ways prescribed by the Act and then the Act went on to say "unless the bishop shall be of opinion, after considering the whole circumstances of the case that proceedings should not be taken on the representation in which case he shall state in writing the reason for his opinion." Now, this case contains many answers to the questions raised by Mr. Phadke. At p. 675 Lord Halsbury gives a conclusive and convincing answer to the contention of Mr. Phadke that it is only when the demands of the workers are frivolous that Government can refuse to make a reference. That is what the Lord Chancellor says:

"It is to my mind obvious that if the only discretion intended to be vested in the bishop was "a particular discretion," that is to say, whether the complaint was frivolous or that there had been really some infraction of the law, it would have been very easy to find appropriate language to give effect to such a provision; but the language of the Legislature has, I think, been careful to shew that the bishop's discretion is not so fettered, and that the inquiry into all the circumstances of the case is one which may justly include consideration of the good to be done or the mischief involved in proceedings which, unless they obtain the bishop's sanction, cannot proceed."

Just as under the Act which the House of Lords was considering the discretion of the Government is unfettered and to suggest that Government can only take into consideration only certain facts and not the others is to limit and qualify the discretion which the Legislature has not thought fit to do. At p. 678 in the speech of Lord Bramwell, the learned Law Lord says:

"Then it was said that there was something he had considered which he ought not to have considered, and something he had not considered which he ought to have, and so he had not considered the whole circumstances and them only. It seems to me that this is equivalent to saying that his opinion can be reviewed. I am clearly of opinion it cannot be. If a man is to form an opinion, and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him."

and lower down the page, the Law Lord says:

"Then it is said why if his decisions cannot be reviewed is he to state his reasons? Lindley L.J., has given an excellent answer to this. It is that he may be under the necessity of forming a careful opinion, and one that will bear public examination."

And Lord Herschell, on a reference to the same topic, at p. 681 says:

"It was contended that inasmuch as the Legislature requires the bishop to state the reasons for his opinion, it was contended that these reasons should be reviewed to the extent at least of seeing that the bishop had considered all the circumstances of the case. I can draw no such conclusion. I think this obligation was imposed upon him, in order to secure, as I think it was calculated to do, a careful consideration of the circumstance of the case, and a conclusion for which in the bishop's opinion, he was able to disclose adequate reasons. The knowledge that his reasons would be made public and be the subject of criticism, would manifestly tend to prevent capricious and ill-considered action."

6. The other judgment is a recent judgment of Lord Greene reported in *Associated Provincial Picture Houses v. Wednesbury Corporation*, (1948) 1 KB 223. There the English Court of Appeal was considering the discretion exercised by the Licensing Authority under the Cinematograph Act and the power given to the local Authorities was to allow a licensed place to be open and used on

Sundays subject to such conditions as the authority thinks fit to impose and when a local authority granted to the plaintiffs leave for Sunday performances subject to the condition that no children under fifteen years of age should be admitted to Sunday performances with or without an adult, the condition was challenged and the court held that the local authority had not acted unreasonably or ultra vires in imposing this restriction. At p. 228 Lord Green says:

"When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case. As I have said, it must always be remembered that the court is not a court of appeal."

And then the Master of the Rolls says:

"When discretion of this kind is granted the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in any opinion, is an absolute one and cannot be questioned in any court of law."

and then he enunciates these principles. The first is that the exercise of such a discretion must be a real exercise of the discretion. If the statute requires the authority to have regard to certain matters, then the authority must have regard to those matters. If the nature of the subject-matter and the general interpretation of the Act makes it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. Bad faith and dishonesty, as the master of the Rolls says, constitute a class by themselves. Then he considers the argument that was advanced by Counsel that the discretion must be exercised with reason and the Master of the Rolls says at p. 230:

"but once it is conceded, as it must be conceded in this case, that the particular subject-matter dealt with by this condition was one which it was competent for the authority to consider, there, in my opinion, is an end of the case."

He concedes that if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the court can interfere but to prove a case of this kind - and here the Master of the Rolls gives a necessary warning "to prove a case of that kind would require something overwhelming" and he again repeats that the decision of the local authority can be upset if it is proved to be unreasonable. The proposition really means that it must be proved to be unreasonable in the sense that the court considers it to be a decision which no reasonable body could have come to. He sums up the discussion by saying that

"the effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authorities that are set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere."

7. These observations apply in their full vigour to the question of the power of the Government that we are considering u/s 12(5). Mr. Phadke is right that there may be cases where the Court would come to the conclusion that the action of the Government is unreasonable as disclosed by the reasons give by them. But those cases would be extremely rare and it would require, as the Master of the Rolls said, something overwhelming.

8. One thing more with regard to the law and then we come to the facts. It is clear that when the court is satisfied that the reasons given by the Government are not proper or not the reasons contemplated by the law, the court can compel the Government to give proper reasons as indeed the court did in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, and as the learned Judge did with regard to certain matters. But what is urged by Mr. Phadke is that if Government has given all the reasons and if the Government does not suggest that there are any other reasons and if the court comes to the conclusion that those reasons are not proper reasons, the court must perform a ministerial task of referring the matter for adjudication. Now, it is clear that it is only if the Government is satisfied that there is a case for reference that a duty arises to make a reference. The satisfaction of the Government is a condition precedent to the making of the reference. However satisfied the Court may be, the court cannot place itself in the position of the Government and make a reference by reason of its own satisfaction. As we pointed out in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, , we may have an extreme case where the Government were to say: "We are satisfied and yet we do not propose to make a reference". In such a case the Court would have the power to order the Government to make a reference and it is highly doubtful that from the reasons given by the Government it will be possible for the court to infer that those reasons disclose satisfaction on the part of the Government to make a reference. In such a highly hypothetical eventuality, we do not dispute the power of the court to compel the Government to make a reference u/s 12(5).

9. Now, turning to the facts and dealing with each reason given by Government, the first is with regard to pay scales and the reason given by Government is : "The pay scales in the Company compare favourably with those obtaining in other comparable concerns in Bombay." Now it is pointed out that all that the report of the Conciliation Officer on this point stated was that the Management also contended that the total emoluments of their employees in each category were higher than concerns comparable to their concern. The management was not prepared to change its scales and the rate of dearness allowance. Now, what is urged is that there was no reference in the report to pay scales in comparable concerns. The only reference was to the total emoluments of the employees and according to Mr. Phadke, the two matters are entirely distinct. Now, the Advocate-General has satisfied us that pay scales of comparable concerns were actually annexed in the Memorandum submitted by the second respondent company to the Conciliation Officer and these papers were before the Government when they gave reasons for not referring the question of pay scales for adjudication. In view

of what we have said earlier it is difficult to take the view that this is not a reason which comes within the ambit of Section 12(5).

10. With regard to the second demand, Confirmation, the reason given by the Government is: "The offer made by the company during the conciliation proceedings to make employees permanent after six months of continuous service is reasonable." In the report of the Conciliation Officer itself it is stated that the management agreed to make every employee permanent after completion of 6 months continuous service. Now, what is pointed out by Mr. Phadke is that the offer made by the Company was a conditional offer and the condition was that existed a permanent vacancy and that the departmental head should report upon temporary worker's ability as good. It is clear that the offer of the company, whether it was conditional or not, being before the Government and the Government taking a view that the offer was reasonable, the reason does not suffer from any infirmity.

11. With regard to Provident Fund and additional gratuity, the learned Judge has taken the view, with which we agree, that it requires reconsideration by the Government, and as the cross-objection filed by the Government, as fairly conceded by the Advocate General in view of our judgment in Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others, , are not pressed, it is unnecessary to say anything more about these two matters.

12. Coming to leave, with regard to privilege leave, the reason given by Government is that 21 days privilege leave per year granted by the Company is adequate, and the grievance, which seems to us to be justified, of Mr. Phadke is that the Government has not given any reason with regard to the other aspects of the question of privilege leave; one is the question of accumulation and the other is with regard to its retrospective effect. Now, the learned Judge dealing with sick leave, where also Government has not given any reason with regard to this aspect of the matter, has asked Government to reconsider their decision. In our opinion, the privilege leave stands on the same footing as sick leave and we will vary the judgment of the learned Judge by including in it the head of privilege leave among the head which the learned Judge has referred back to Government for giving proper reasons.

13. With regard to casual leave, that point has not been pressed by Mr. Phadke.

14. With regard to leave in general, all that the Government says is that the demand is not reasonable. Now, prima facie we would have taken the view that this is hardly a reason contemplated by Section 12(5) but when we turn to the demand of the employees, the demand is:

"Any leave taken in any year should be treated as part of service of 11 months. Leave should be available according to the convenience of the employees."

And it seems to us that on the face of it, this demand is untenable and the Government was right in characterising it as unreasonable. Even Mr. Phadke

could not say anything in support of this rather extra-ordinary demand on the part of the workers.

15. The demands with regard to overtime payment, uniforms and allowances are not pressed.

16. With regard to Standing Orders, the reason given by the Government is that the Company is not covered by the Industrial Employment (Standing Orders) Act, 1946 but it has agreed to frame service rules providing, inter alia, for classification, leave retirement, discharge etc. Now, what Mr. Phadke says is that it is left to the sweet will of the Company to frame Standing Order or not. Now, the Government points out that there is no obligation upon the company to frame Standing Orders as it does not fall within the Industrial Employment (Standing Orders) Act, 1946. But even so, in the interest of industrial peace it has accepted the agreement of the Company to frame rules dealing with certain service conditions. We are sure that the Company will carry out this agreement. If it does not, it is always open to the employees to raise a dispute with regard to this matter and we are sure that if such a dispute is raised and the Government finds that the company has not abided by this agreement, it will take necessary action.

17. Now, finally coming to the case of Mr. Ferns, the reason given by the Government is:

"Shri Ferns had resigned and was offered reemployment later on but he refused to accept it."

Now, in the report of the Conciliation Officer, what is stated with regard to Mr. Ferns is that

"the Union contended that the management had forced Mr. Ferns to retire and as such he should be given all benefits retrospectively in particular different types of leave, bonus, gratuity, provident fund and medical expenses. The management contended that Shri Ferns had resigned of his own accord, due to ill-health. The management was not prepared to consider the demand."

Now, what is urged by Mr. Phadke is that there is nothing in the report of the Conciliation Officer to suggest that Mr. Ferns was offered re-employment. Now, the fact the Ferns was offered re-employment is stated in the affidavit made by Mr. Brahmbhatt on behalf of the Government and the Advocate General has also pointed out to us that in the notes maintained by the Conciliation Officer, which were before the Government, there is a clear statement that during the conciliation proceedings the company had stated that it had offered re-employment to Mr. Ferns who refused to accept it.

18. Mr. Phadke also argued that the learned trial Judge should not have referred the matter back to the Government in respect of the heads to which reference has been made but should have issued a Writ of Mandamus to Government to refer these matters to adjudication. In view of what we have stated earlier in the

judgment about the law, it is clear that this contention of Mr. Phadke is untenable and must fail.

19. Under the circumstances, we are of the opinion that the judgment of the trial court should be maintained except with the slight modification that the Government will reconsider the question of making or refusing to make a reference u/s 12(5) not only with regard to the disputes under the heads Provident Fund, additional gratuity and sick leave but also with regard to privilege leave. In substance, the appeal fails.

20. With regard to the costs, the learned Judge made the order that each party should bear its own costs. It is true that in substance the appellants have failed. But the appeal had raised questions of considerable importance and it is just as well as far as this Court is concerned that the law should be finally settled by the Court. Under the circumstances we think the fairest order to make should be - no order for costs of the appeal and no order for costs of the cross-objections. The order made by Mr. Justice K.T. Desai directing the Government to pay Rs. 75/- as costs of an adjournment will be vacated.

21. Liberty to the appellants' attorneys to withdraw the sum of Rs. 1000/- deposited in the Court.

22. Order accordingly.