
(2007) 04 DEL CK 0195

In the Delhi High Court

Case No : Writ Petition (C) No. 13467 of 2005

Ganesh Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Industrial Disputes (Amendment) Act, 1971 — Section 3
Industrial Disputes Act, 1947 — Section 10, 10(1), 11A, 2

Citation : (2007) 140 DLT 10 : (2007) 95 DRJ 642 : (2007) 114 FLR 355

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sanjoy Ghose, for the Appellant; Pushkar Sood, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—By way of the present petition, the petitioner workman prays inter alias for a writ of certiorari for quashing the order of Union of India, respondent No. 1. herein, dated 4th January, 2005 declining to make a reference of the industrial dispute and seeks directions to the respondent No. 1 to make a reference u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), of the dispute espoused on behalf of the petitioner workman.

2. Before proceeding further, it would be appropriate to briefly narrate the facts of the present case. The father of the petitioner workman was employed in the Post and Telecommunication Department, respondent No. 2 herein, as a Record-Keeper, Audit Department, with effect from 20th June, 1996. On 9th August, 2000, the father of the petitioner workman died, leaving behind the mother of the petitioner and four children including the petitioner. On 7th December, 2000, the mother of the petitioner workman made an application to the respondent No. 2 for grant of compassionate appointment to the petitioner workman. The said request, however, was rejected by the respondent No. 2 vide its letter dated 28th November, 2000 on the ground that there was no vacancy in the quota of posts reserved for "Compassionate Appointment". On the respondent No. 2's failure to

reconsider its decision, the petitioner workman served a demand notice dated 23rd January, 2002 on the respondent No. 2, his cause having been espoused by the Delhi Labour Union. On no action being taken by the respondent No. 2. pursuant to the service of demand notice, the Delhi Labour Union raised an industrial dispute by preferring a statement of claim before the Assistant Labour Commissioner. As against this, the respondent No. 2 filed a written statement stating therein that 5% quota for compassionate appointment was already full and that while the respondent had sympathy for the petitioner workman, it was bound to abide by the rules of the Government of India issued in this regard. Rejoinder was filed by the petitioner workman and on 9th August, 2004 a Failure of Conciliation Report was filed by the Assistant Labour Commissioner with the respondent No. 1 in which it was stated that the conciliation had failed on account of "diverse views" of the parties. The respondent No. 1, however, vide the impugned order, declined to make a reference on the ground that the dispute was not considered fit for adjudication for the following reasons:

It is reported that the claim of Sh. Ganesh for appointment on compassionate ground was considered by the management. The management could not grant any relief in the light of the Government rules.

3. In the course of arguments, learned Counsel for the petitioner workman submitted that the respondent No. 1, while exercising its jurisdiction u/s 10(1) of the Act, had no power to go into the merits of the matter as the same is beyond the scope and powers available with an Appropriate Government u/s 10. It was further submitted that the respondent No. 1, was not justified in declining to refer the matter for adjudication as the same would amount to final adjudication of the dispute in total disregard of the procedure prescribed under the Act and the settled principles of law. In support of his contentions, learned Counsel for the petitioner workman, placed reliance on the following judgments:

(i) Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others,

(ii) Sh. Subhash Chand v. Government of NCT and Anr. 2005(3)AD 206

(iii) G.M. Haryana Roadways v. Pawan Kumar (2005) 12 SCC 459

(iv) Municipal Employees Union v. The Secretary (Labour) and Anr. 1999 LLR 1020

4. I have heard the counsels for the parties and have perused the records including the impugned order passed by the respondent No. 1. In view of the submissions made by the counsels for the parties, the only issue that arises for the consideration of this Court is as to whether the respondent No. 1 could have refused to refer the dispute for adjudication by the Industrial Tribunal or the Labour Court. In other words, the limited issue that needs to be dealt with is that whether the Appropriate Government, in exercise of its powers u/s 10(1) of the Act, can itself reject a claim petition on the ground that no relief could be granted in view of the Government rules and can decline to refer the same for

adjudication.

5. The above said issue is no longer rest integra. The law regarding the ambit and scope of the powers of the appropriate government to make or decline a reference u/s 10(1)(c) of the Act, was considered at great length by this Court in the case of Shri. Subhash Chand (supra), wherein the learned Single Judge took into consideration a catena of judgments on the said issue including the following:

- (i) State of Madras Vs. C.P. Sarathy and Another,
- (ii) State of Bombay Vs. K.P. Krishnan and Others,
- (iii) Bombay Union of Journalists and Others Vs. The State of Bombay and Another,
- (iv) Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others,
- (v) Shambu Nath Goyal Vs. Bank of Baroda,
- (vi) M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another,
- (vii) Ram Avtar Sharma and Others Vs. State of Haryana and Another,
- (viii) Workmen of Syndicate Bank, Madras Vs. Government of India and Another,
- (ix) Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others,

6. After having referred to various decisions of the Supreme Court and High Courts on the issue and after having traced the development of law in this regard, it was observed as under:

20. Reading of the above judgments of the highest Court of the land shows that provisions of Section 10 of the Act were construed not quite liberally. The jurisdiction of the State Government was stated to be an administrative function and not a judicial or quasi judicial function. Formation of an opinion u/s 10(1) of the Act was relatable to whether an industrial dispute existed or is apprehended "It was not the same thing as to adjudicate the dispute itself on merits". In other words, the appropriate Government was not competent to travel beyond the limits of forming a prima facie opinion with regard to existence of the dispute or that an industrial dispute was apprehended. The Government was not competent to directly or indirectly determine the merits of the dispute. Formation of an opinion without encroaching upon the domain of adjudication was the essence of powers vested u/s 10(1) of the Act.

21. The Industrial Law, developed as a result of subsequent amendments to the Act as well as by judicial pronouncements by different Courts, is having far reaching effects on the various facets of this law. Section 11A was incorporated in the Act by Section 3 of the Industrial Disputes Amendment Act, 1971 with effect from 15th December, 1971. The purpose of this amendment was primarily

to enlarge the scope of the adjudication process before the Industrial Court or Tribunal and vest powers of wider magnitude in the Courts. The basic intent was to prevent the unfair labour practice by the Management and to ensure that the workman was not subjected to victimisation. This Section really did not effect the power of the Government u/s 10(1) of the Act in relation to refer or not to refer the industrial dispute to the Labour Court or Tribunal in exercise of its administrative power. One obvious conclusion of this amendment is that a workman can also claim a reference even with regard to the quantum of punishment even in a case of proven misconduct. He could raise an issue that the punishment inflicted upon him was ex-facie disproportionate to the gravity of the misconduct. The Government would have hardly any jurisdiction to decline a reference even of this kind within the purview and scope of the provisions of Section 10 of the Act.

...

25. It will be appropriate to conclude that the dimensions of the powers vested in the appropriate Government u/s 10(1)(c) of the Act are wide which require proper application of mind in consonance with the above enunciated principles but in no way the appropriate Government could usurp or abdicate to itself the powers of determination which are exclusively vested in the Labour Court/Tribunal. Long delays by itself may not be sufficient to deny the reference requested for by the workman unless it is so seriously prejudicial to the other party to result in unfair unjust advantage to the workman and would permit the workman to take undue advantage of his own conduct or the dispute is so belated and stale that in the eyes of law it has extinguished or lost its substance.

7. Reliance has been rightly placed by the counsel for the petitioner workman on a decision by a learned Single Judge of this Court in the case of Municipal Employees Union (supra), where on similar facts, the matter was referred back to the appropriate Government for referring the dispute for adjudication. In the said case also the appropriate Government had refused to refer a dispute pertaining to compassionate appointment to the Labour Court/ Industrial Tribunal on the ground that the petitioner therein was not covered u/s 2(k) of the Act, and Therefore the dispute was not an " industrial dispute". Relying on the judgment of the Supreme Court in the case of Telco Convoy Drivers Mazdoor Sangh and Anr. (supra), it was held as under:

6. In so far as the ground for rejection given in order dated 11.7.1995 is concerned, it need not detain us for long as the appropriate Government could not decline to make reference on the ground mentioned in the impugned order dated 11.7.1995. My conclusion is based on the following reasons:

(a) ...

(b) The ground of rejection mentioned in the impugned order dated 11.7.1995 is, Therefore, untenable. Order dated 11.7.1995 warrants to be set aside also on the ground that by declining to make reference on the aforesaid ground the

"appropriate Government" has really taken upon itself adjudicatory function which is not within the jurisdiction of respondent No. 1. Whether Shri Badley Ram is entitled to the appointment on compassionate ground or not is a matter to be examined by the labour/Industrial Tribunal which is the Adjudicatory Authority. There is no doubt that making or not making reference is administrative function and the Government may refuse to make reference on valid and relevant consideration but when reasons for refusing reference tantamount to adjudication the appropriate Government has no jurisdiction to refuse to make reference on such grounds as function of the appropriate Government is an administrative function and not judicial or quasi judicial function. Whether Sh. Badley Ram is covered by the scheme of appointment on compassionate ground and entitled for appointment on the basis of the said scheme or not is for the Labour Court to decide. Therefore on this ground also the impugned order dated 11.7.1995 warrants to be quashed.

8. What flows from the above mentioned cases is that, while exercising power u/s 10(1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function, the government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the powers conferred on it by Section 10 of the Act. In the present case, the act of the appropriate government in rejecting the claim of the petitioner workman and declining to refer the dispute for adjudication amounts to going into the merits of the matter, and the same is not within the powers of the appropriate government. To decide on the issue as to whether the appointment of the petitioner workman on compassionate grounds would be in accordance with the Government rules laid down in this regard or not, certainly amounts to going into the merits of the matter, which is beyond the powers of the respondent No. 1. u/s 10 of the Act.

9. In view of the aforesaid discussion and in light of the settled law in this regard, the impugned order dated 4th January, 2005, is quashed and the respondent No. 1 is directed to consider the case of the petitioner workman in accordance with law and refer the dispute for adjudication to the Industrial Tribunal/Labour Court in accordance with the provisions of Section 10 of the Industrial Disputes Act, 1947, preferably within six weeks from the date of receipt of a copy of this order.

10. In terms of the aforesaid directions, the petition is allowed, leaving the parties to bear their own costs.