
(2014) 01 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition 11658 (W) of 2003

G.I.S. Limited

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4) 2(s)

Citation : (2014) LLR 290

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Partha B. Chowdhury, Mr. Sujit Kumar Sharma and Mr. S.K. Singh, for the Appellant;

Final Decision : Disposed Off

Judgement

Harish Tandon, J.—By an order dated 6th January 2014, the petitioner was directed to serve notice upon the respondents indicating that this matter shall appear in the supplementary list after two weeks. Affidavit-of-service filed today shows that service is effected upon the respondents. Despite service there is no representation on behalf of the respondents when the matter is taken up today.

2. The petitioner has assailed the order of reference, passed by the appropriate Government. According to the petitioner, the private respondent tendered resignation, which was duly accepted and, thereafter, communicated to him and there was no occasion to pass an order terminating service of the private respondent.

3. The issue, relating to termination, was never in dispute, far to speak of the Industrial Dispute, between the parties. The dispute, at best, could be attributed to the wrongful contention of the parties whether the resignation was submitted or not or was procured and/or obtained on misrepresentation.

4. The apprehension of the petitioner is that the Tribunal is statutorily bound to act within the precincts of the order of reference and cannot travel beyond it. In

this regard reference is made to Section 10(4) of the Industrial Disputes Act, 1947. The petitioner contends that appropriate Government has issued the order of reference without applying its mind and, therefore, the order of reference is per se bad and is liable to be quashed and set aside.

5. It is not in dispute that the private respondent was employed with the petitioner and is a workman within the definition enshrined u/s 2(s) of the Industrial Disputes Act, 1947. The purported letter of resignation is the foundation of the severance of the relationship of the employer and employee. The private respondent says that he never tendered the resignation letter though at the second breath he says that the same was procured and/or obtained on false representation as there was no manifest intention to resign from the service.

6. Resignation and termination are two separate and distinct things. What could be culled out from Section 10(4) of the Industrial Disputes Act, 1947 that the Labour Court or the Tribunal assumes jurisdiction from an order of referring an industrial dispute and, therefore, is confined to adjudicate those points and the matters incidental to the said order of reference.

7. Apprehension of the petitioner appears to be well founded which can further be fortified from a judgment of the Apex Court, rendered in the case of Moolchand Kharati Ram Hospital K. Union Vs. Labour Commissioner and Others, In the said judgment, the order of reference relates to entitlement of wages for the lockout period. The management took a stand that there was no lockout. In the above backdrop, it is held:

3. The workmen filed an appeal to the Division Bench stating that the relevant material placed before the Government having been considered the real dispute between the parties had been referred to the Industrial Tribunal and that the order in question being administrative in nature could not be interfered with at all. The High Court examined the matter and took the view that the learned Single Judge is justified in quashing the order of reference.

4. In these appeals the contention put forth before us is that the order made by the Government, making a reference to the Tribunal, is administrative in character and, therefore, the High Court should not have interfered with the same. Even if we proceed on the basis that the nature of the order, making a reference, is administrative in character, it is certainly open to the High Court to examine whether relevant considerations in making the reference had been taken note of or not. In the view of the High Court relevant considerations have not been taken note of by the Government and that finding cannot be seriously disputed.

5. In the circumstances, we think the view of the High Court is justified. However, that would not solve the problem of the parties. The proper course to be adopted is to direct the first respondent to take appropriate steps to make a reference to the Tribunal concerned after considering all the relevant material on record in the case. Let such steps be taken within three months from today. The

appeals stand disposed of accordingly.

8. This Court, therefore, finds that the order of reference by the appropriate Government is passed without application of mind and, is, therefore, liable to be quashed and set aside.

9. Accordingly, the appropriate Government shall revisit on the issue; and if otherwise found that industrial dispute exists, would appropriately pass an order of reference within six weeks from the date of communication of this order.

10. The writ petition is, accordingly, disposed of. There shall, however, be no order as to costs.