
(1992) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 856 of 1991

Gopal Das Daga

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1994) 1 LLJ 929

Hon'ble Judges : Shacheendra Dwivedi, J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : Rajendra Menon, for the Appellant; Ravindra Srivastava, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The petitioner was employed with the Central Bank of India, Raipur as sub-accountant His services were terminated on November 22, 1988. He approached this Court earlier in writ petition, Misc. Petition No. 2769 of 1989 but withdrew it on August 23, 1989 with liberty to raise an industrial dispute. Thereafter, he approached the Asstt. Labour Commissioner, Raipur, for conciliation proceedings. The conciliation failed. The failure report is Annexure B dated January 29, 1990. The management of the Central Bank of India did not agree taking a plea that there was no merit in the case of the petitioner. The failure report was submitted to the Union of India for a reference u/s 10 of the Industrial Disputes Act, 1947. By the impugned communication dated September 10, 1990 (Annexure C), the Union of India, department of labour, refused to make a reference communicating reasons for: refusal as under:

"It appears that Shri Gopal Das Daga was working as an officer of the Bank discharging supervisory duties. He is, therefore not a workman within the meaning of Section 2(g) of the Industrial Disputes Act. (correct section should have been Section 2(s) of the Act)."

2. By this petition, under Article 226 of the Constitution, the petitioner challenges the impugned communication (Annexure C) of the Union of India refusing to make reference of the industrial dispute to the Tribunal for adjudication u/s 10 of Industrial Disputes Act, 1947.

3. Learned counsel for the petitioner assails the communication of refusal contending that whether the petitioner falls within a definition of workman u/s 2(s) of the Industrial Disputes Act is a question for adjudication by the Tribunal and the concerned authority of the Union of India has out stepped its jurisdiction in recording the finding that the petitioner was not a workman and refusing reference on that ground. Reliance is placed on decisions of the Supreme Court in *Nirmal Singh Vs. State of Punjab and Others*, and *S.K. Verma v. Mahesh Chandra* (1983 II LJJ 429) as also on *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*,

4. Learned counsel appearing for the Union of India made some efforts to persuade us to uphold the order of refusal. It is argued on behalf of the Union of India that the finding contained in the impugned communication (Annexure C) has not been challenged in the petition. It is also contended that it was open for the Union of India u/s 10 of the Industrial Disputes Act as referring authority to come to a conclusion on the basis of the material available on record that the petitioner was not a workman and no reference in the dispute between the petitioner and the employer could be referred u/s 10 of the Industrial Disputes Act. The decisions cited on behalf of the petitioner were sought to be distinguished.

5. Having heard learned counsel appearing for the parties, in our opinion, the contentions advanced on behalf of the petitioner have to be accepted and directions are deserved to be issued to the respondent to make a reference of the dispute to the concerned Industrial Tribunal u/s 10 of the Industrial Disputes Act. The failure report on record is Annexure D. It was not the stand of the management of the Central Bank of India in the course of conciliation that the petitioner was not a "workman" u/s 2(s) of the Industrial Disputes Act. Whether a particular employee falls within the definition of "workman" is a question not purely of law but is a mixed question of law and facts. The question whether an employee falls within the definition of "workman" u/s 2(s) or not cannot be decided without adjudication in the course of which the parties are allowed to lead evidence as has been held by the Supreme Court in *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar* (supra) and *S.K. Verma v. Mahesh Chandra* (supra). Relevant factors which may be required to be considered are nature of employment, nature of duties of the employee and nature of industry, to come to a conclusion whether an employee is a "workman" or not. The contention advanced on behalf of the Union of India cannot be accepted that merely on the basis of the nature of post on which the petitioner is working and the nature of industry, it could be held by the Union of India that the petitioner was employed in a supervisory capacity and was, therefore, not a workman u/s 2(s) of the

Industrial Disputes Act. Scope of power of the Union of India as an authority empowered to make a reference u/s 10 of the Industrial Disputes Act came for consideration before the Supreme Court in case of Talco Convoy Drivers Mazdoor Sangh v. State of Bihar (supra) and it has been held in para 14 as under (p. 561):

"Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function u/s 10(1) of the Act, As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory."

In the instant case, there was nothing before the referring authority to come to a conclusion that the petitioner was discharging duties and was outside the definition of a "workman" u/s 2(s) of the Industrial Disputes Act.

6. Consequently, the petition succeeds and is allowed. The respondent Union of India is directed to make a reference of the dispute of termination of service of the petitioner to the concerned Tribunal u/s 10 of the Industrial Disputes Act within a period of two months.