

(1966) 03 P&H CK 0023
In the Punjab And Haryana At Chandigarh

Gopal Karamchari Union

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 12, 18, 33

Citation : (1968) 1 LLJ 737

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Judgement

P.C. Pandit, J.—This order will dispose of two connected writ petitions (Civil Writs Nos. 823 and 824 of 1965). It was agreed by the counsel for the parties that the decision in Civil Writ No. 824 of 1965 will also apply to Civil Writ No. 823 of 1965 in which the point involved is the same. I will, therefore, be referring to the facts of only Civil Writ No. 824 of 1965.

2. This writ petition under Articles 226 and 227 of the Constitution has been filed by Gopal Karamchari Union, a registered trade union, representing the workmen employed by Gopal Paper Mills, Ltd., Yamuna Nagar, district Ambala, against the State of Punjab through the Secretary, Department of Labour, Government of Punjab, the Labour Commissioner, Punjab, the Conciliation Officer, Punjab, and Gopal Paper Mills. Ltd., Yamuna Nagar, respondents 1 to 4. Their prayer is that respondents 1 to 3 be directed to carry out their statutory duties under the provisions of the Industrial Disputes Act by referring the industrial dispute to an industrial court or tribunal. It is also prayed that respondent 1 be directed to cause a reference of the industrial dispute arising out of their demand notices dated 28 June 1963, 30 July 1963 and 22 June 1964 to an industrial court or tribunal for adjudication.

3. According to the allegations of the petitioner, the total number of workmen in the paper mill is about 2, 800, out of which the petitioner had on its roll on the material date a membership of about 1,000 employees and the same

membership continued up till date. On or about 25 June 1963, the petitioner-union on behalf of the workmen represented by it gave a demand notice in accordance with the provisions of the Industrial Disputes Act (hereinafter referred to as the Act). These demands related to the reinstatement of one Chander Bhan, who was a member of the executive committee of the petitioner-union, and it was contended that his dismissal was illegal and mala fide. It was also demanded that he be paid full wages and allowances for the period of his suspension the management did not accede to these demands. A copy of the notice of demand was also sent to the conciliation officer, Chandigarh. On 9 July 1963, the conciliation officer, Sri R.S. Sihani, wrote a letter to the effect, that the said demand notice was not accompanied by the letter of authority in form F as required by Rule 36 of the Industrial Dispute (Punjab) Rules, 1950 (hereinafter called the rules), and directed that the same be sent within seven days in order to enable him to start conciliation proceedings". This direction was complied with on 23 July 1963, Thereafter, on 30 July 1963, the conciliation officer issued notice to both the parties for convening a conciliation meeting on 7 August 1963. On 2 August 1963, the conciliation officer wrote to the petitioner wherein he stated as under:

The management has represented as under: Union is devoid of representative character, as substantial majority of the workers are not with you and that the present office-holders of the union have not been selected validly and as such have no locus standi, it is felt that before the demands put up by you are taken to conciliation under the Industrial Disputes Act, an enquiry is necessary for the above objections of the management and for this you should produce all the relevant records on 7 August 1963, at 4 p.m. in the Town Hall at Jagadhri.

On the said date, the petitioner produced before the conciliation officer the relevant record to prove that the petitioner-union did not lack representative character and that it represented about 1,000 workmen out of 2, 800. The conciliation officer seemed to be satisfied about the representative character of the petitioner-union and the existence of the industrial dispute. During the pendency of the conciliation proceedings, the management continued the policy of victimization, contravening the provisions of Section 33 of the Act. It dismissed Joginder Singh, joint secretary of the union and some others. The management also mala fide transferred Hari Krishan, senior vice-president of the union. As a result, the petitioner served another demand notice on 13 August 1963, asking for the reinstatement of the workers, namely, Joginder Singh, Ram Naresh Singh, Sarovar Nath and Chander Bhan. It was also demanded that the transfer of Hari Krishan be withdrawn and he be reinstated at his usual post at Yamuna Nagar. For reasons best known to the department, this case was withdrawn from Sri R.S. Sahani and entrusted to Sri Joginder Singh, who was the labour officer at Chandigarh. He then, on 12 September 1963, wrote a letter to the petitioner informing them that for the reasons stated therein the demand notice had been filed being devoid of any merit. It was mentioned in this letter-

Over and above that the management of the mills have put a written representation that out of the total employment strength 2,818 employees of the mills, 1,384 employees are not supporting the said demand notice and they forwarded statement duly signed by 2584, that they have got no connexion with Sri Gopal Karamchari Union and the said demand notice does not carry their support. Your union as such is lacking representative character and is not competent to raise a dispute against the management of the mills as sought for- vide the said demand notice.

In the circumstance as enumerated above, the said demand notice has been filed being devoid of merit.

On 18 September 1963. the Labour Commissioner, Punjab, respondent 2, also wrote to the petitioner-union saying that the letter of authority as required under Rule 36 was not furnished to the conciliation officer and hence it was not possible to take action on their demand notice. On 28 September 1963, the petitioner-union wrote to the conciliation officer saying that

- (1) Sri Joginder Singh was not a competent officer to proceed with the conciliation proceedings.
- (2) the demand notice had the backing of a substantial number of workmen and was approved by the general body.
- (3) secret ballot be taken in the matter, and
- (4) it was not competent for the conciliation officer to assume Jurisdiction u/s 12(5) to reject their demand notice.

As the policy of victimization by the management continued the petitioner served a notice of demand on 23 October 1963, in continuation and as a part of the demand notices served on 25 June 1963 and 30 August 1963. This demand related to the reinstatement of Ram Naresn Singh. The petitioner also submitted a fresh letter of authority signed by 907 workers. On 23 October 1963, the petitioner addressed a letter to the Joint Labour Commissioner, Chandigarh, requesting him to order the conciliation officer to continue with the conciliation proceedings in the interest of industrial peace and welfare of the workmen. In this letter it was also mentioned that the signatures of the workers be kept confidential as the policy of victimization by the management continued and it was apprehended that the workers, who espoused the cause of the dismissed employees, might be victimized. The mala fides of the department would be apparent that during these proceedings, it, on 30 October 1963, ordered that the registration of the petitioner-union be cancelled on the ground that the signatures of Madan Lal on the registration application were secured by fraud. An appeal was preferred against the said order on 16 November 1963 in the Court of the District Judge Ambala, who, by his judgment dated 27 July 1964, set aside the order of the Labour Department. On 9 November 1963, the petitioner addressed a detailed letter to the Joint Labour Commissioner stating therein that

the delay in proceeding with the conciliation proceedings and not referring the dispute to the industrial tribunal had created an impression in the workers' mind that the Labour Department had failed to assist the workers in their effort to work in a constitutional way. On 16 November 1963, Sri Joginder Singh, conciliation officer, informed the petitioner that he would be visiting Yamuna Nagar on 25 November 1963, and shall be holding the necessary enquiry in regard to all the complaints against the management. The petitioner-Union was asked to keep all records of membership, registration, procedure, the books and assets and liability records in respect of the union ready for inspection. On 19 November 1963, the petitioner wrote a letter to the Joint Labour Commissioner saying that the union had asked for an enquiry to be conducted against Sri Joginder Singh and, therefore, the enquiry into their affairs should not be held by him. Dissatisfied with the inordinate delay and attitude of the entire Labour Department, the petitioner, on 22 November 1963, gave a notice to the general manager of respondent 4, with copies to respondents 1 to 3, intimating its intention to start hungerstrike with effect from 4 December 1963. On 4 December 1963, Sri Joginder Singh wrote to the petitioner that as the matter was under investigation, the hungerstrike should not be resorted to. Similar letters were also written by the labour inspector and the conciliation officer on 4/5 December 1963. As the workers were completely dissatisfied with the attitude of the Government and the employer, a regular hungerstrike was started on 6 December 1963. On 9 December 1963 and on subsequent days about 70 workers, including the president and the vice-president, were arrested. On 27 May 1964, after the release of workers from the Jail, a supplementary notice of demand was submitted regarding the reinstatement of the workmen dismissed during this period. The conciliation officer, by his letter, dated 4 June 1964, replied that this notice of demand was not accompanied by the letter of authority in form F. On 9 June 1964, the petitioner wrote again saying that since the demand notice under reference was a supplementary notice, there was no need to attach the letter of authority in form F. However, to satisfy the conciliation officer, the petitioner submitted an application bearing the signatures of about 1,000 workmen. As the workers were feeling the injustice very much, they signed the said application in blood rather than in ink to show that their support was unambiguous. On 17 June 1964, however, the conciliation officer filed this supplementary demand notice on the ground that since the original demand notice, dated 30 August 1963, to which this was a supplementary demand, had been filed, this also was being filed. On 23 June 1964, the petitioner served a comprehensive demand notice asking for the reinstatement of all the dismissed workers including those dismissed before hungerstrike. In connexion with this demand notice, Sri M.K. Jain, conciliation officer, wrote a letter dated 3 July 1964 calling the representatives of the petitioner-union at Chandigarh for conducting a preliminary enquiry. The representatives attended the said meeting on 6 July 1964. During the discussion, the conciliation officer pointed out that the signatures of the workers should have been taken on form F to enable him to start conciliation proceedings. On 7 July 1964, the petitioner-union again wrote a

letter explaining that the objection taken by the employer about their representative character was frivolous and without any basis. Thereafter, a meeting of the representatives of the union with the conciliation officer was held on 29 July 1964 in the presence of the Joint Labour Commissioner. The minutes of this meeting were conveyed to the petitioner-union by the letter of the conciliation officer dated 29 July 1964. Along with the said letter the conciliation officer sent 80 copies of form F duly initialled by him for being signed by the workers who supported the demand. It was also mentioned that these forms should be returned within fifteen days after the receipt of the said letter. The petitioner was sure to get the signatures of the workers on the prescribed forms, but the Labour Commissioner with a view to hush up the matter wrote a letter on 3/4 August 1964 to the petitioner, alleging that they were getting the signatures on the forms by misrepresenting the purpose of the signatures. The letter also stated that there was likelihood of the breach of peace on this account. The forms given to the petitioner were to be treated as withdrawn and any signatures obtained by them thereon were not to be considered genuine. As the conciliation officer failed to exercise his power and perform his duties, the petitioner, on 10 August 1964, wrote to the Minister for Labour pointing out the various irregularities and malpractices of the department. The petitioner-union also enclosed the letters of authority signed by 811 workers supporting the demand notice dated 22 June 1964. It was also stated in this letter that the Labour Department, for pure extraneous and mala fide reasons, was trying to hush up the matter. The petitioner-union, therefore, requested that the State Government, in exercise of the inherent power, might refer the entire dispute raised in the demand notice; dated 22 June 1964, u/s 10(1) of the Act. Thereafter, the representatives of the petitioner-union saw the Minister-in-charge in September 1964. He discussed the entire matter with them and was satisfied that the petitioner-union represented a group of workmen who were entitled to raise an industrial dispute; that an industrial dispute did exist between the management and the workmen; and that it was a case in which a reference should be made to the labour tribunal. The Minister expressed his opinion in very clear terms and he passed orders to the effect that the matter be referred to an industrial tribunal, in spite of that the department did not issue any orders in this behalf even though a period of six months had passed in the meantime. The Labour Commissioner visited Yamuna Nagar on 26 February 1965, and met the employer and the petitioner's representative, but expressed his inability to do anything in the matter. The conciliation officer and the State Government had thus failed to carry out their statutory duties imposed on them under the law. The employer had victimized the workmen and had actually dismissed about 70 persons. They had been dismissed during the pendency of the conciliation proceedings, which was in contravention of Section 33 of the Act. The entire course of the proceedings and the deliberate delay in taking Action left no doubt that authorities under the Act had not acted in accordance with the letter and spirit of the industrial law. That led to the filing of the present writ petition on 29 March 1965.

4. In the return filed by the State, it was admitted that the total strength of the workmen in this mill when the dispute in question arose was about 2, 875. It was, however, denied that the petitioner-union had a membership of 1,000 employees, because no membership record was produced by the union before any of the conciliation officers in support of this contention of theirs. It was denied that the petitioner-union had the support of a substantial number of workmen of respondent 4 to espouse the demand notice. It was admitted that the demand notice, dated 30 August 1963, was served by the union but it was denied that the conciliation proceedings were pending and respondent 1 had contravened the provisions of Section 33 of the Act. It was stated that the case of the petitioner union had been entrusted to Sri Joginder Singh, who was also a conciliation officer, and this was done in public interest and for the purpose of expeditious disposal of the same, as Sri R.S. Sahani was otherwise busy in the disposal of a number of other disputes. Besides, Sri Joginder Singh had greater experience of handling disputes of establishments with large number of employees on account of his having worked as a conciliation officer under the Central Government for a number of years. It was denied that Sri Joginder Singh was not competent to hold conciliation proceedings or that the notices of demand were supported by substantial number of workmen. The conciliation officer was within his rights not to proceed with the conciliation proceedings in view of the non-existence of the industrial dispute or there being no apprehension of the industrial dispute. It was denied that the objections raised by Sri Jogindar Singh were irrelevant or had been taken to prevent the machinery under the Act being put in motion as alleged by the petitioner-union. It was stated that there was no mala fide intention in canceling the registration of the union. It was done in bona fide exercise of the powers after necessary enquiries on the basis of a complaint received by the Registrar of Trade Unions. It was not admitted that the document purporting to bear the signatures of 907 workers amounted to a valid letter of authority as alleged by the petitioner-union. These signatures were obtained in a different context and not in support of the demand as alleged. It was asserted that there was neither any delay nor any unfair treatment with the workers as alleged by the petitioner-union and that proper investigation of the demand notices was made. The allegations levelled by the petitioner-union against Sri Joginder Singh, conciliation officer, were found to be baseless and unwarranted. It was admitted that the workmen were advised by the Labour Commissioner to desist from resorting to hungerstrike and confine themselves to the constitutional methods for resolving the dispute. It was further admitted that some arrests had been made, but that was done by the other authorities, who were in charge of the law and order situation and had to maintain peace. It was denied that the conciliation officer informed the petitioner-union in the meeting held on 6 July 1964, that the signatures of the workers should have been taken on form F to enable him to start conciliation proceedings. On the contrary, the petitioner-union was informed by letter, dated 14 July 1964, that the so-called letter of authority furnished by the union in support of the demand notice would be considered on merits. It was admitted that the supplementary demand notice

was received, but the same had been filed, because the petitioner-union's demand notice, dated 30 August 1963, to which thin was a supplement, had since been filed on the ground that the petitioner-union did not command the support of substantial number of workmen or the establishment. Besides, the so-called documents bearing signatures of 1,000 workmen submitted subsequent to the demand notice, dated 27 May 1964, by the petitioner-union were found to be prepared for purposes other than in support of the said demand notice, dated 27 May 1964. These signatures or thumb-impressions were obtained in December 1963, as the dates under the signatures showed. It was denied that the conciliation officer acted without juresdiction or with ulterior motive in not initiating the conciliation proceedings. Ha was not competent to undertake conciliation, if the pre-condition that an industrial dispute existed or was apprehended was not satisfied. The preliminary enquiry as to whether any industrial dispute existed or was apprehended was made separately and at different times. It was denied that the objections taken by the employer against the demand notice, dated 22 June 1961, were frivolous and without basis. It was admitted that the conciliation officer supplied eighty sheets initialed by him to the petitioner-union for being signed as a proper authority in form F by the workers who supported the demand notice and they ware to a returned within fifteen days. It was further admitted that the Labour Commissioner, on being satisfied that the said forms F were misused, withdrew them stating, inter alia, that these would not be considered genuine in the dispute between the union and respondent 4. This step was taken bona fide in order to prevent the union from making unfair and improper use of the said forms. It was denied that this was done with a view to deprive the petitioner-union of their legal right available to them under the Act. It was not correct that extraneous or irrelevant reasons weighed with the Labour Department or the Government in the exercise of their jurisdiction, in not starting the conciliation proceedings or making a reference of the alleged dispute for adjudication. The State Government makes a reference u/ s 10(1) of the Act only if it is expedient to do so and, in the present case, it was not considered expedient to make a reference. Besides, no industrial dispute existed or was apprehended calling for any intervention by the State Government. The alleged letter of authority supplied by the petitioner-union was not found to be genuine as the signatures were obtained in a different context, in 1963 and not in support of the demand notice of 22 June 1964. That showed that the petitioner-union was adopting fraudulent means to convert the alleged dispute into an industrial one. It was mentioned that the minutes recorded by the Minister were written on 17 September 1964, upon the verbal representation of the petitioner-union and on an occasion when the file of the case and the records of the department were not available to him. The discussion of the case, however, took place on 16 October 1964 when fall facts had been placed before the Minister and lie had revised the prima facie opinion formed by him upon the verbal representation as indicated in his minute, dated 17 September 1934. It was conceded that the Minister in the said minutes held the view that the request of the workers, who were challenging their dismissal, was reasonable; that their

demand notice might be referred to the tribunal and, as such, a reference be made without delay to avoid hardship upon the affected workmen. Later on, the Labour Commissioner submitted the file of the case giving the history of the matter and his views to the Secretary, Labour, who also appended his own note on 3 October 1964. On 5 October 1964, the entire matter was discussed amongst the three, that is, the Minister, Labour Secretary and the Labour Commissioner and it was then decided that a more elaborate analysis of the facts of the case and its history be prepared. The note was then put up by the Labour Commissioner on 6 October 1964 and it was discussed between the Secretary and the Minister on 7 October 1964. It was settled that a verification about the strength of persons who supported the demand notice be made by a senior officer of the department on the spot. Accordingly, the Deputy Labour Commissioner was deputed and after spot verification on 10 October 1964 he reported inter alia that out of 811 signatories, who purported to support the demand notice 747 had signed subsequent agreements, dated 4 September 1964, 10 September and 9 October 1964, wherein a clause existed that

No pending dispute was in existence.

These agreements had been noted upon by the workmen by acceptance of payment of ad (sic) increase in wages under other clauses mentioned in the agreement. It was on the basis of this report that the matter was later discussed between the representatives of the union and the Minister in the presence of the Secretary, Labour, on 16 October 1984. The Minister accepted the thorough examination of the case by the department. He desired farther verification to be done and also stated that even if the result of verification was found in favour of the workmen, it would not be assumed that the matter would be necessarily referred to the tribunal. The other aspects, legal or otherwise, would still remain to be examined and what farther steps should be taken would be within the discretion of the Government to decide. It would thus be clear that in his notings of 16/17 October 1964, the Minister revised the tentative and the prima facie views of the matter which he had taken in his initial notings, dated 17 September 1964, referred to above. It was denied that respondent 4 dismissed the workmen during the pendency of the conciliation proceedings or contravened the provisions of Section 33 of the Act. The conciliation proceedings were not initiated by the conciliation officer, because no industrial dispute existed or was apprehended. The conciliation officer acted within law in not starting the conciliation proceedings. No irrelevant consideration weighed with him in declining to initiate those proceedings. The conciliation officer, before initiating conciliation proceedings, had to be satisfied that the demand had been raised by the workmen competent to do so, that there was no bar to the raising of those demands on account of any subsisting award or settlement, etc., and that the dispute had been sponsored by substantial number of workmen in the present case, the settlements dated 4 September, 10 September and 9 October 1964, arrived at u/s 18(1) of the Act were binding as between the signatories thereto numbering 2,776 out of the total strength of 2,875 and respondent 4 up to 1

June 1967. Since 747 workmen out of 811 who purported to have sponsored the demand notice, dated 22 June 1964, settled their dispute through the aforesaid three settlements, the balance number of workmen could not be taken to be a substantial number, who could sponsor the dispute on behalf of 2,376 workmen of the establishment. Fifty workmen, who allegedly sponsored the said demand notice, were dismissed employees of respondent 4. It was denied that there was any undue delay in the disposal of the alleged dispute. In fact, the petitioner-union was primarily responsible for whatever delay that occurred, because the said union was always indulging in dillydallying tactics inasmuch as they were either not submitting the letter of authority in form F as prescribed under Rule 39 or they were submitting documents signed by workmen for purposes other than in support of the demand notices. It was denied that the petitioner-union was entitled to any relief by means of a writ of mandamus. It was submitted that at any rate after the aforesaid three settlements came into effect, there could be no question of any pending industrial dispute between respondent 4 and its workmen and, as such, there could not be any industrial dispute or any apprehension of any industrial dispute, which would Justify an order of the Stats Government for a reference to an industrial tribunal or any initiation of conciliation proceedings. The settlement, dated 4 September 1964, was signed on behalf of 2,252 workmen of respondent 4 by the president and general secretary of Gopal Paper Mills Labour Union which at all material times and still was representative of the workmen of respondent 4. These 3,252 workmen signed or put thumb-impression on the letter of authority authorizing the said president and the general secretary of Gopal Paper Mills Labour Union to sign the said settlement on their behalf. The settlement, dated 10 September 1964, was signed or thumb-marked by 427 workman and the settlement, dated 9 October 1931, by 97. Thus, 2,776 workmen, out of a total number of 2,876, had settled their industrial disputes and the settlements were binding on respondent 4 and the workmen. These three settlements had since been implemented. On 11/12 October 1964, as a result of verification done by the office of the Labour Commissioner, it was found that out of 811 alleged signatories to form F, relied upon by the petitioner-union, 747 were also signatories to one or the other said three settlements. At any rats, the present writ petition raised several disputed questions of fact which by themselves disentitled the petitioner to any relief under Article 226 of the Constitution.

5. It may be stated that after the return had been filed by the State and respondent 4, no replication was filed by the petitioner-union.

6. Learned Counsel for the petitioner contended that even a minority of workman of respondent 4 could raise an Industrial dispute, provided it was supported by a trade union or by an appreciable number of workmen of that establishment. If the industrial dispute was sponsored or supported by a trade union of the establishment, it was not open to the conciliation officer or the Government to go into the matter whether the union represented an appreciable number of workmen of that establishment or not. Ha further submitted that the settlement

between the management and the workmen, which was not brought about during the course of conciliation proceedings by the conciliation officer, was binding only on the parties to that settlement and not the other workman. If the settlement did not deal with the demands made by the workmen, then those demands could still be referred for conciliation or adjudication and that settlement would not be a bar thereto. It was also submitted that if the rejection or refusal to refer for conciliation or adjudication was on extraneous grounds, which were not germane to the dispute or the provisions of the Act, then this Court would issue a writ to the authorities and the Government to do their statutory duty under Sections 10 and 12 of the Act.

7. Two questions arise for decision in this case:

- (1) whether an industrial dispute existed or was apprehended, and
- (2) if it did or was apprehended, the Government should or should not have referred the same to an Industrial court or tribunal for adjudication.

8. So far as the first question is concerned, It clear that a dispute between an employer and a single employee cannot per se be an Industrial dispute, but it may become one If it is taken up by the union or a number of workmen of that establishment. The persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute (see in this connexion in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, The controversy in the instant Case, however, was that though the demand of the workers was supported by the petitioner-union the position of respondents 1 to 3 was that this union had not the support of a substantial number of workmen of respondent 4. That being so, there was no industrial dispute, which could be referred for adjudication. The case of the petitioner, on the other hand, was that if the union was of that particular establishment, than it was not necessary to go into the question whether the union represented an appreciable number of workmen of that establishment or not. By the mere fact that the cause of the workmen has been espoused by the union of that establishment, the same became an industrial dispute, which should have been referred for adjudication. Reference in this connexion was made by the learned Counsel for the petitioner to the Supreme Court decision mentioned above. It is unnecessary to decide this point, because of my finding on the second question that arises for decision in this case. Assuming that there was an industrial dispute, was the Government bound to refer the same for adjudication ? This is the second question that needs determination. The power to refer an industrial dispute to the tribunal for adjudication is given in Sections 10 and 12(5) of the Industrial Disputes Act. Section 10 of the Act says that where an appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the same to a tribunal for adjudication. According to Section 12(5), if, on a consideration of the report of the conciliation officer, the appropriate Government is satisfied that there is a case for reference to the tribunal, it may make such a reference. Where the

appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefore. In the instant case, we are only concerned with the provisions of Section 10, because the conciliation officer, respondent 3, was not of the opinion that any industrial dispute existed or was apprehended and he had, consequently, not held conciliation proceedings in the prescribed manner as referred to in Sub-section (1) of Section 12. While dealing with both these provisions a Bench of this Court in *Workmen of Oswal Weaving Factory Vs. State of Punjab*, observed thus (at p. 564):

that in deciding whether to make a reference or not under Sections 10(1) and 12(5) of the Industrial Disputes Act, the appropriate Government acts in an administrative capacity and not in exercise of judicial or Quasi-judicial powers, but this does not mean that the decision of the Government is not liable to be declared non est and the High Court cannot issue a direction to the appropriate Government to decide the matter in accordance with law where it is found that reference has been declined either on extraneous considerations or mala fide or without even referring to the report of the conciliation officer u/s 12(4) of the Act. The following propositions emerge from the conciliation of the decided cases in this behalf (p. 568):

(1) That an appropriate Government acting in exercise of its powers u/s 10(1) read with Section 12(5) of the Act exercises administrative functions and not judicial or quasi-judicial functions;

(2) That in exercise of its powers u/s 10(1) of the Act, the appropriate Government has a discretion to refer or not to refer any dispute to a labour court or tribunal, but such discretion has to be exercised in accordance with the provisions of the Act itself, that is, the appropriate Government can decline to make a reference only on two grounds, viz.-

(i) that there is no industrial dispute which can be referred;

(ii) that it is not expedient to make a reference in the circumstances of the case;

(3) If an appropriate Government declines to make a reference on any of the abovementioned two permitted grounds, the decision of the Government would not be amenable to a writ or direction of this Court and it would not be open to the Court to compel the Government to make a reference. The High Court will not sit in appeal over the decision of the appropriate Government on any of the aforementioned two matters;

(4) An appropriate Government can be compelled by a writ in the nature of mandamus to consider the matter as required by Section 12(5) of the Act and then to exercise its discretion u/s 10(1) of the Act in accordance with law if it is either admitted or proved that conciliation proceedings had taken place and a report had been submitted by the conciliation officer u/s 12(4) of the Act, but that the appropriate Government had not seen the report of the conciliation officer or taken it into consideration at all before deciding whether to make a reference or

not;

(5) A writ of mandamus would also issue if the Government declines to make a reference u/s 12(5) of the Act, without recording the reasons for such refusal and without communicating the same to the parties concerned; and

(6) An appropriate writ would also issue to the State Government if it is admitted or proved that the refusal to make a reference of the dispute in question is not bona fide or is actuated by malice or is based on considerations which are wholly irrelevant or extraneous and are not germane to the statutory considerations on which reference can be declined.

Applying the rule of law laid down in the Bench decision, referred to above, by which sitting singly I am bound, we have to see whether in the instant case, the Government has refused to make the reference on wholly irrelevant or extraneous considerations, which are not germane to the statutory considerations on which a reference can be declined. In the present case, the Government has given two reasons for not referring the dispute for adjudication. The first is that, according to them, there was in existence no industrial dispute inasmuch as the individual dispute of certain workmen had not been espoused by an appreciable number of workmen of this establishment, and, secondly, the Government did not think it expedient to make a reference in the circumstances of this case, because 2,776 workmen, out of a total number of 2,876 of this establishment had settled their disputes with the employers and that settlement had since been implemented. Out of 811 signatories to the demand notice, 77 had settled their disputes. Time a negligible number of workers remained who had disputes with the establishment and the Government, therefore, thought that it was not expedient to refer the same for adjudication. According to the Bench decision of this Court, if the Government had declined to make a reference on the basis of one of the two permitted grounds, the decision of the Government would not be amenable to a writ or a direction by this Court and it would not be open to this Court to compel the Government to make a reference. This Court could not sit in appeal over the decision of the appropriate Government on any of the two permitted grounds. Even if the first ground may not be correct, the other one, namely, that the Government does not consider it expedient in the circumstances of the present case to make a reference, is one of two permitted grounds on which the Government could decline to make a reference since in the present case, the Government has given that ground, it is extremely doubtful if this Court on the strength of the Bench decision, referred above, can examine the reasons on the basis of which the Government thought it expedient not to make the reference. Assuming that this Court can examine the reasons, let us see whether there is any substance in the contentions raised by the learned Counsel for the petitioner. His objection to the settlement arrived at between the workmen and their employers, which was not, admittedly, made during the course of the conciliation proceedings, are mainly two:

(1) that it did not deal with all the demands made by the workmen and,

therefore, those demands, which were not covered by this settlement could still be referred for adjudication and this settlement would not be a bar thereto; and

(2) that it did not comply with Rule 58 of the industrial Disputes (Punjab) Rules, 1958, inasmuch as the settlement was not signed by five representatives of the workmen as mentioned in Sub-rule (2)(6) and the copies were not Jointly sent to the authorities concerned as provided in Sub-rule (4).

9. So far as the first is concerned, it is clearly stated by the signatories to the settlement that now, i.e., thereafter they had no dispute or difference with the management. That means all their disputes had been settled. As regards the second objection, in the first place, the same were not specifically taken in the writ petition. Secondly, they are of a formal nature. When all the workers had individually signed the settlement, there was no question of getting it signed by only five representatives of theirs. There is an endorsement on one copy of the settlement, annexure R.M. 4, to the return filed by the management, which shows that copies were sent to the conciliation officer, the Labour Commissioner and the Secretary to the Punjab Government, Labour Department. The other settlements are also of the same type. The fact remains that the copy of the settlement was on the record of the department. Besides, in the return filed by the State, it is clearly mentioned that the Deputy Labour Commissioner was deputed and after spot verification on 10 October 1964, he, inter alia, reported that out of 811 signatories, who purported to support the demand notice, 747 had signed subsequent agreements dated 4 September 1964, 10 September 1961 and 9 October 1984, wherein a clause existed that "no pending dispute was in existence," which agreements had been acted upon by the workmen by acceptance of payment of ad hoc increase in wages under other clauses recited therein. The Government thus fully satisfied itself that the workman had actually arrived at a settlement; with the management. It is after this verification that they came to the conclusion that since a negligible number of workmen remained, who had still disputes with the management it was not expedient to refer their disputes for adjudication. It is pertinent to mention that none of the persons, who were previously signatories to the demand notice and had later on arrived at a settlement with the management, has come forward to challenge the said settlement. That conclusively proves that they have no grievance whatsoever against the management. Under these circumstances, it is not possible to hold in the instant case that the Government had declined to make the reference on wholly irrelevant and extraneous considerations which were not germane to the statutory considerations on which reference could be declined.

10. In view of what I have said above, these petitions fail and are dismissed but with no order as to costs.