
(1985) 01 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1594 of 1981

Hukam Chand

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-01-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12, 2

Citation : (1985) RLW 131 : (1985) 1 WLN 301

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—In this writ petition, the petitioner, Hukam Chand has challenged the legality of the order (Annexure 7) dated 9th January, 1980 and the order (Annexure 8) dated 7th September, 1981 whereby the Central Government refused to refer for adjudication an industrial dispute relating to the early retirement of the petitioner.

2. The petitioner was an employee of M/s. Jaipur Udyog Ltd., respondent No. 2 (hereinafter referred to as "the Company"). He joined the company in 1953 and was posted as Mechanical Foreman at the Phalodi Lime Stone Quarry. According to the petitioner his date of birth is 16th April, 1931 but the Company notified the date of birth of the petitioner as 16th April, 1921. The petitioner filed objections against the aforesaid entry about the date of his birth and requested for correcting the same, but the management of the company refused to correct the entry about date of birth and on the basis of the date of birth as entered in the company's records, the petitioner was retired from service on 15th April, 1979, An industrial dispute was raised and it was taken up for conciliation, but the conciliation efforts failed and the Conciliation Officer submitted a failure report. Thereafter the matter was considered by the Government of India and the Central Government passed the order (Annexure 7) dated 9th January, 1980

whereby the Government refused to refer the dispute for adjudication for the reason that the petitioner was not a workman as defined in the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The petitioner submitted a representation for reconsideration of the said order dated 9th January, 1980, but the said representation was rejected by the Government by order (Annexure 8) dated 7th September, 1981. Feeling aggrieved by the aforesaid orders, the petitioner has filed this writ petition.

3. Shri A.K. Bhandari, the learned Counsel for the petitioner has submitted that the Control Government was not justified in law in refusing to make a reference on the ground that the petitioner is not a workman under the Act. Shri Bhandari has submitted that the petitioner was designated as Mechanical Foreman at the time of his retirement and he was employed to do manual and technical work for hire or reward, and that he was not employed in any supervisory capacity and, therefore, he was a workman within the meaning of the said term as defined in Section 2(s) of the Act. Shri A.K. Bhandari has also submitted that in any event as to whether the petitioner was a workman u/s 2(s) of the Act or not involves questions of law and fact which can be properly determined only on the basis of evidence by the Industrial Tribunal or the Labour Court and that the Central Government was not justified in refusing to make a reference on the ground that the petitioner was not workman under the Act. In support of his aforesaid submission, Shri Bhandari has placed reliance on the decision of the Supreme Court in *Nirmal Singh v. State of Punjab and Ors.* AIR 1984 SC 1919.

4. In my opinion the aforesaid contention of Shri A.K. Bhandari must be accepted. In *State of Bombay Vs. K.P. Krishnan and Others*, , the Supreme Court while dealing with the powers of the State Government to refer an industrial disputes for adjudication u/s 10(1) read with Section 12(5) of the Act, has laid down:

The problem which the Government has to consider while acting u/s 12(5)(a) is whether there is a case for reference. This expression means that Government must first consider whether a prima facie case for reference has been made on the merits. If the Government comes to the conclusion that a prima facie case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference. The question as to whether a case for reference has been made out can be answered in the light of all the relevant circumstances which would have a bearing on the merits of a case as well as on the incidental question as to whether a reference should never the less be made or not. A discretion to consider all relevant facts which is conferred on the Government by Section 10(1) could be exercised by the Government even in dealing with cases u/s 12(5) provided of course the said discretion is exercised bonafide, its final decision is based on a consideration of relevant facts and circumstances, and the second part of Section 12(5) is complied with.

The order passed by the Government u/s 12(5) may be an administrative order

and the reasons recorded by it may not be justifiable in the sense that their property, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the court hearing a petition for mandamus is not sitting in appeal over the decision of the Government; never the less if the court is satisfied that the reasons given by the Govt. for refusing to make a reference are extraneous and not germane then the court can issue and would be justified in issuing a writ of mandamus even in respect of such an administrative order.

5. In *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , the Supreme Court, after referring to the earlier decision in *State of Bombay v. K.P. Krishnan (supra)*, has observed:

The decision in that case clearly shows that when the appropriate, Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider, *prima facie* the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises question of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal.

6. In *Nirmal Singh v. State of Punjab and Ors. (supra)*, the Supreme Court was dealing with case where the Labour Commissioner, had refused to make a reference on the ground that the employee was not a workman. The Supreme Court set aside the said order on the ground that the reasons for holding that the employee was not a workman, were not disclosed in the order but instead of remanding the matter to the Labour Commissioner, passed an order directing the Labour Commissioner to make a reference.

7. In view of the aforesaid decisions, it is clear that while passing an order u/s 10(1) read with Section 12(5) of the Act, the appropriate Government may consider *prima facie* the merits of the dispute and take into account other relevant considerations which would help it to decide whether in making a reference would be expedient or not but at the same time in cases where the dispute in question raises questions of law and disputed questions of fact, the appropriate Government should not purport to reach a final decision on the said questions because that would normally lie within the jurisdiction of the Industrial Tribunal or the Labour Court. It is also necessary that while exercising this power, the appropriate Government in case it chooses not to make a reference must give reasons for arriving at the said conclusion & if the said reasons are found to be extraneous or irrelevant, then the said decision of the appropriate Government can be open to challenge under Article 226 of the Constitution of India.

8. In the present case Central Government which was appropriate Government, while refusing to make a reference has not given any reason as to why the petitioner could not be regarded as a workman u/s 2(s) of the Act. Further more the question as to whether the petitioner is a workman u/s 2(s) of the Act, involves questions of law as well as fact which can more be appropriately decided by the Industrial Tribunal or Labour Court on the basis of evidence. The Central Government while dealing with the questions as to whether reference has to be made or not, is not expected to hold an inquiry on the question and the order refusing to make a reference on the ground that the petitioner is not a workman, cannot, therefore, be upheld.

9. Relying upon the decision of the Supreme Court in *Nirmal Singh v. State of Punjab and Ors.* (supra), Shri A.K. Bhandari has submitted that this Court may also pass an order directing the Central Government to make a reference in the present case because similar direction was given by the Supreme Court in the case of *Nirmal Singh v. State of Punjab and Ors.* (supra). In my opinion the decision of the Supreme Court in *Nirmal Singh v. State of Punjab and Ors.* (supra), is based on the facts of that particular case and while exercising powers of this Court under Article 226 of the Constitution, it would not be appropriate for this Court to give a direction to the Central Government to make a reference. All this Court can do, is to quash the impugned orders and direct the Central Government to reconsider the matter in accordance with law.

10. Shri U.N. Bhandari, the learned Counsel for the Company, has submitted that the company has been declared a relief undertaking under the provisions of the Rajasthan Relief Undertaking (Special Provisions) Act, 1961 and that in exercise of the powers conferred by the said Act, the State Government has excluded the applicability of the provisions of the Act to the undertaking of the Company. The submission of Shri U.N. Bhandari was that if the provisions of the Act are not applicable, then the power u/s 10 of the Act cannot be exercised and no purpose would be served in giving a direction to the Central Government to reconsider the matter. Shri A.K. Bhandari has on the other hand submitted that the undertaking relating to the cement factory only is covered by the notifications issued under the Rajasthan Relief Undertaking (Special Provisions) Act and that the lime stone quarry of the company at Phalodi does not fall within the ambit of the said Act and as the petitioner was employed in the said lime stone quarry it is open to the Central Government to make a reference. In support of his aforesaid submission, Shri A.K. Bhandari has pointed out that the Central Government has in past referred for adjudication industrial disputes relating to employees working in the lime stone quarry of the Company even though the company was a relief undertaking at that time. I do not wish to go into this question. This is a matter for the Central Government to consider while dealing with the question as to whether the industrial dispute should be referred or not.

11. In the result the writ petition is allowed. The order (Annexure 7) dated 9th January, 1980 and the order (Annexure 8) dated 7th September, 1981 are set

aside and the Central Government is directed to reconsider the matter with regard to referring the industrial dispute relating to the alleged early retirement of the petitioner in accordance with law. No order as to costs.