

(1992) 03 RAJ CK 0045
In the Rajasthan High Court
Case No : Civil Writ Petition No. 834 of 1990

Kalu Ram

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1992) 1 RLW 496 : (1992) 3 WLC 713 : (1992) 1 WLN 577

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This writ petition is directed against the order dated July 27, 1989, passed by the Special Secretary (Administration], Labour Department, Government of Rajasthan, Jaipur by which the State Government refused to refer the dispute for adjudication to the Labour Court. . .

2. The petitioner was working as the driver with the Rajasthan State Road Transport Corporation. A departmental enquiry was initiated against the petitioner for his misconduct relating to January 4, 1985, when he was found carrying five passengers and 180 Kilograms of luggage without ticket on bus No. 2058, when the bus entered at the Bus Stand, Mandna. He was, also, charge-sheeted for an incident relating to February 13, 1985, when he was driving the bus. No. 160 and when that bus reached at the Bus Stand, Kaleda, thirty-five passengers were found without tickets. He was, also, charge-sheeted with respect to the incident dated January 24, 1985, with respect to bus No. 8412 when it reached at the Bus Stand, Muthli, seven passengers were found without tickets. The Enquiry Officer submitted his report and in his report, he found the petitioner guilty only with respect to the charge dated January 4, 1985, with respect to bus No. 2058. The Disciplinary Authority, after giving an opportunity of hearing to the petitioner, by its order dated September 23 1985, held the petitioner, guilty for the charge with respect to the incident dated January 4,

1985, and imposed the penalty of stoppage of one grade increment and the forfeiture of the balance of the subsistence allowance. Dissatisfied with the order dated September 23, 1985, passed by the Disciplinary Authority, the petitioner preferred an appeal before the General Manager (Traffic), who, by his order dated June 25, 1986, dismissed the appeal filed by the petitioner. A dispute was raised on behalf of the petitioner through the R.S.R.T.C. Sanyukt Karmachari Federation before the Conciliation Officer, Labour Department, Rajasthan, Jaipur. The Conciliation Officer submitted its failure report u/s 12(4) of the Industrial Dispute Act, 1947 (hereinafter referred to as "the Act"). The State Government thereafter, after giving an opportunity of hearing to the Federation, as well as to the employer, by its order dated July 27, 1989, refused to refer the dispute for adjudication to the Labour Court as according to the Government, no industrial dispute existed and the penalty imposed is adequate. It is against this order, refusing to make a reference that the petitioner has preferred this writ petition.

3. Heard learned Counsel for the parties.

4. It is contended by the learned Counsel for the petitioner that the functions of the State Government u/s 10(1) of the Act read with Section 12(5) of the Act, are administrative functions and not the judicial or quasi-judicial functions and, therefore, while performing the administrative functions the Government is not expected to go into the merit of the case and decide the dispute on its merit. The Government had only to see at that time whether any dispute existed or not and not the merit of the case. In support of its case, the learned Counsel for the petitioner has placed reliance over: *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, . The learned Counsel for the petitioner further submitted that no reasons have been given in the orders Annexure.2 and Annexure.3 and, therefore, the orders Annexure.2 and Annexure.3 deserves to be quashed and set-aside. The learned Counsel for the respondents, on the other hand, has supported the order passed by the State Government and has urged that the petitioner was found guilty after due enquiry and while deciding the case whether the dispute is to be referred for adjudication or not, the determination of merit of the case is not foreign to the enquiry. In support of his contention, the learned Counsel for the respondents has placed reliance over: *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , *State of Bombay Vs. K.P. Krishnan and Others*, *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, and *Christian Medical College Hospital Employees Union and Anr. v. Christian Medical College, Vellore Association and Ors.* (1987) 4 SCC 1691.

5. I have considered the rival submissions made by the learned Counsel for the parties.

6. The law, which has been propounded in the judgments in: *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, and *State of Bombay Vs. K.P. Krishnan and Others*, , cited by the learned Counsel for the respondents, is that the government is not precluded from considering prima

facie the merit of the dispute raised the dispute u/s 10 of the Act, when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5) of the Act or not. If the claim made is patently frivolous or clearly belated, the appropriate Government may refuse to make a reference. It is further held that a prima facie examination of the merit cannot be said to be foreign to the enquiry, which the appropriate government is entitled to make in dealing with a dispute u/s 10(1) of the Act. The judgments in the case, reported in State of Bombay Vs. K.P. Krishnan and Others, is of five Hon"ble Judges and the judgment referred in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, is delivered by the Bench consisting of three Judges, while the judgment, on which the reliance has been placed by the learned Counsel for the petitioner, is of a Bench consisting of two Judges. When there is a conflict between the decisions of the Supreme Court itself then the judgment given by the Larger Bench shall prevail. In this view of the matter, the law point as stands covered by the decision of the Larger Benches of the Supreme Court, is that at the time of dealing with the question whether any industrial dispute exists or not and whether it should be referred for adjudication to the Labour Court or not, prima facie consideration of the merit of the case is not foreign to the enquiry to be conducted by the Government and the Government while considering the case, has, prima facie, to look into the merit of the dispute, also. The question of making a reference or refusing to make a reference of an industrial dispute for adjudication to the Labour Court, is the discretion of the Government and that discretion should be exercised judiciously and the order of refusal should be based on cogent and justified reasons and should not be based on extrenuous, irrelevant or irrational consideration not germane to the case. The reasons given, also must not be fanciful, unjust or frivolous. The powers of the Government u/s 10(1) read with Section 12(5) of the Act are administrative in nature and not judicial or quasi judicial, but they are open to judicial review if the Court is satisfied that the reasons given by the Government are not the reasons as contemplated by the law or they are extrenuous and not germane to the question of dispute. It is not each and every dispute which is raised by a workman, that should be referred for adjudication to the Labour court and the Government has to apply its mind whether any industrial dispute exists and whether it requires adjudication by the Labour Court. In the present case, the State Government has properly considered the case of the petitioner and has rightly come to the conclusion, after fully considering the material on record, that no dispute exists in the present case and it is inexpedient to refer the dispute for adjudication. When the State Government came to the conclusion from the material on record and gave its reasons, which cannot be said to be irrelevant or irrational or extrenuous or not germane to the question in dispute, therefore, I am of the view that the State Government rightly refused to refer the dispute for adjudication to the Labour Court.

7. In this view of the matter, I do not find any merit in the writ petition and the

same is hereby dismissed.