

(1994) 08 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 5934 of 1986

Kashinath Raghunath Shinde

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 19-08-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1997) 3 LLJ 496

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; V.P. Malvankar, P.K. Rele and P.N. Shah, for the Respondent

Judgement

1. This Writ Petition under Article 226 of the Constitution of India impugns an Order, dated May 22, 1984, made by the Dy. Commissioner of Labour, Pune, u/s 12 of the Industrial Disputes Act, refusing to make a Reference of the industrial dispute raised by the petitioner.

2. The salient facts requisite for disposal of this Writ Petition are : The petitioner was in the permanent employment of the Third Respondent as a Miller for about 13 years. He was an active member of a trade union and actively participated in its legitimate trade union activities. He was served with a charge sheet dated May 2, 1983, 15 alleging a misconduct against him. An inquiry was held, and he was dismissed from service by an Order, dated July 2, 1983. The Petitioner made a demand for reinstatement, which was not conceded. The Petitioner, therefore, moved the conciliation machinery and, by report made on February 7, 1984 under the Industrial Disputes Act, the Conciliation Officer reported the failure of the conciliation proceedings. By a letter dated February 26, 1984, the Petitioner pointed out to the Dy. Commissioner of Labour, Pune, several important facets of his case, which, according to him, had been lost sight of by the Conciliation Officer in his report. On the basis of the contentions raised in his letter, the Petitioner sought a reference of his industrial dispute by making out a case of

dismissal for legitimate trade union activities. In reply thereto, the Dy. Commissioner of Labour, Pune, informed him that he was not satisfied that there was any case for reference of the dispute for adjudication u/s 12(5)(a) of the Industrial Disputes Act, 1947 for the reason, "having regard to the nature of misconduct, the merits of the inquiry and the quantum of punishment, the reference is not justified". Further letters, dated June 6, 1984 July 31, 1984 and October 10, 1984 addressed by the Petitioner to the Dy. Commissioner of Labour, Pune, appealing to him to refer the industrial dispute fell on deaf ears. Under cover of his letter, dated October 10, 1984, the Petitioner had also enclosed a copy of the Judgment, dated September 19, 1984 delivered by this Court in Writ Petition No. 2602 of 1983 (per Pendse J.). The reply of the Dy. Commissioner of Labour vide letter dated January 10, 1985 was that he found no reason to change the decision already taken, and a reiteration that the earlier decision in the matter stood. A further appeal made by the Petitioner to the Minister of Labour, some time in September, 1986, did not elicit any response. Hence, the Writ Petition.

3. The legal position as to the limits of the discretion of the appropriate Government u/s 10 of the Industrial Disputes Act for refusing a reference of an industrial dispute has been laid down by number of decisions of the Supreme Court and of this Court, and it is unnecessary for me to reproduce them, except to indicate that, u/s 10, the appropriate Government is not entitled to adjudicate the merits of industrial dispute. In any event, after the coming into force of Section 11-A of the Industrial Disputes Act, the jurisdictions of the Labour Court and Industrial Tribunal have been considerably expanded. It would, therefore, be impermissible for the appropriate Government summarily to shut the door in the face of an aggrieved workman by resort to extraneous considerations or by adjudication of the merits of industrial dispute. [See in this connection, the judgment of Pendse J. dated September 19, 1984 in Writ Petition No. 2602 of 1983 and also the following subsequent judgments of the Supreme Court :

- (1) Nirmal Singh Vs. State of Punjab and Others,
- (2) Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others,
- (3) M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another,

4. In the circumstances of this case, I am satisfied that the appropriate Government has erroneously declined to exercise its power u/s 10 of the Industrial Disputes Act by failing to refer the industrial dispute raised by the petitioner to the appropriate forum. Though, normally, when this Court interferes with such an order, it is usual to set aside the order and direct the appropriate Government to reconsider the issue. I am unwilling to do so for the reason that the petitioner was dismissed in the year 1983, the dispute was raised in 1983, and, till today, the workman has not been given an opportunity of having the merits of his industrial dispute adjudicated before an appropriate forum. It is

permissible for this Court to direct the appropriate Government by a Mandamus to refer the industrial dispute in such extraordinary cases. See, in this connection, the following cases :

(1) Nirmal Singh v. State of Punjab and Others, (Supra)

(2) Telco Convoy Drivers Mazdoor Sangh and Another v. State of Bihar and Others, (Supra)

(3) The M. P. Irrigation Karmachari Sangh v. State of M. P. and Another, (Supra)

5. In the result, the writ petition is allowed, rule made absolute in terms of prayer's (a) and th (b). The First Respondent shall make the reference to the appropriate forum within 6 weeks from today. The First Respondent to pay the costs of this petition.

6. Certified copy expedited.