

(1989) 01 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 21 of 1987

Krishna G. Naik Borkar and Another	APPELLANT
Vs	
Kadamba Transport Corpn. Ltd. and Others	RESPONDENT

Date of Decision : 11-01-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1989) 59 FLR 28 : (1993) 3 LLJ 22

Hon'ble Judges : Kurdukar, J;Kamat, J

Bench : Division Bench

Advocate : Nahesh Sonak, for the Appellant; P.A. Khokar, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Kamat, J.—This petition under Article 226 of the Constitution of India seeks to quash the communication dated 18th September, 1986, made by the Under Secretary, Industries and Labour Department of the Government of Goa, whereby the Government has refused to refer the industrial dispute raised by the petitioner and his Union, the second petitioner, for adjudication to the Industrial Tribunal. We have heard learned counsel for the parties and, in our view, this petition can be disposed of by a short order.

2. The petitioner had been the driver with respondent No. 1, Kadamba Transport Corporation. On 19th June, 1985, he was driving the bus belonging to respondent No. 1 between Margoa and Gaodongri. It is alleged against the driver that he had permitted one Tulsidas Nagvenkar, who was otherwise the conductor of that bus, to drive the bus and at the relevant time, the petitioner stood behind his back guiding him in the matter of driving that bus. Respondent No. 1 considered this as misconduct on the part of the petitioner and an inquiry was taken up against the petitioner as well as the conductor, Tulsidas Nagvenkar. After the relevant show-cause notice, an Inquiry Officer was appointed and a joint inquiry was held against the petitioner and the aforementioned Tulsidas

Nagvenkar. On completion of the inquiry and based on the report of the Inquiry Officer, a show-cause notice dated 24th February, 1986, was issued by the general manager of the corporation seeking explanation from the petitioner as to why punishment of forthwith dismissal be not imposed on him. Even before any explanation was furnished and on rejection or extension of time, the general manager passed an order on 18th March, 1986, dismissing the petitioner as also the conductor, the aforementioned Tulsidas Nagvenkar. The petitioner along with his Union, namely, the petitioner No. 2, raised an industrial dispute before the Assistant Labour Commissioner. A similar dispute was also raised by the aforementioned conductor, Tulsidas Nagvenkar. Though the matter was taken up in conciliation with the Assistant Labour Commissioner, the same ended in failure and as a result, failure conciliation report dated 1st July, 1986, was forwarded to the Industries and Labour Department of the Government of Goa. The impugned communication dated 18th September, 1986 (exhibit P-13), made by the Under Secretary refused to refer the dispute for adjudication to the Industrial Tribunal. In that communication it was stated that since the petitioner has been dismissed from service after being given an opportunity to defend against the charges made against him which are proved beyond doubt, therefore, the Government thought it fit not to refer the dispute to the Tribunal for its adjudication.

3. It is by now well settled that the Government cannot by itself decide on the merits of the dispute on a failure report submitted by the Conciliation Officer. It is equally needless to mention that the Industrial Tribunals are constituted to decide the dispute between employee and employer by the very Act, namely, the Industrial Disputes Act, 1947. Inasmuch as the Under Secretary has communicated that the Government has refused to refer the dispute on the ground that opportunity had been given to the petitioner to defend himself against the charges made against him and by further holding that those charges are proved beyond any doubt, it is needless to mention that the Government has on its own adjudicated the dispute in violation of the settled position of law. We are, therefore, unable to sustain the impugned communication dated 18th September, 1986 (exhibit P.13).

4. The next question that arises before us is whether we should direct the appropriate Government to re-consider the case for reference of the dispute for adjudication before the Industrial Tribunal by remitting the matter back to the Industries and Labour Department. It is common ground that the conductor, Tulsidas Nagvenkar, who was concerned with the petitioner in the joint inquiry and against whom an order of dismissal was also passed and whose reference has been rejected, had challenged the communication of the Government in Writ Petition No. 19 of 1987. This writ petition was disposed of by a Bench of this Court on 18th February, 1988, thereby remitting the dispute to the Government for its consideration afresh. It is equally common ground that once the matter was remitted, the Government has now referred the dispute of Tulsidas Nagvenkar to the Industrial Tribunal for its adjudication. Since the inquiry was joint in so far as Tulsidas Nagvenkar and the petitioner is concerned, there is no

point in remitting the present case to the Government and requiring them to make an order for adjudication by the Tribunal and this court can conveniently do so as the companion matter is already now pending before the Industrial Tribunal. The dispute raised by the petitioner and his Union, namely, petitioner No. 2, is hereby referred to the Industrial Tribunal at Panaji on the following terms.

"Whether the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji, in terminating the services of Shri Krishna G. Naik Borkar, driver, with effect from 18th March, 1986, is legal and justified? If not, what relief is the workman entitled to?"

5. Respondents Nos. 2 and 3 are directed to forward the case papers to the Tribunal within four weeks from the date of this order. The petition accordingly succeeds. Rule is made accordingly absolute in terms of prayer (a) and instead of prayer (b), the dispute stands referred to the Industrial Tribunal at Panaji in terms of reference as indicated above. Order accordingly. There shall be no order as to costs.