
(1973) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 4005 of 1972

Lakshmi Narain Kapoor

APPELLANT

Vs

The Punjab State, etc.

RESPONDENT

Date of Decision : 23-08-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12(5)

Citation : (1975) 2 ILR (P&H) 428

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : C.L. Lakhanpal, for the Appellant; L.K. Sood, for Advocate-General for Respondents 1 to 3 and N.K. Sodhi, for Respondents 4 and 6, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—The Petitioner was employed as a clerk by M/s. Bharat Woollen Mills, Ltd., Amritsar (hereinafter referred to as the Mills). Vide letter dated 9th May, 1972, written by the Mills, the Petitioner was informed that his services having become surplus were being terminated with immediate effect and a sum of Rs. 2,217.89 due to him was being remitted to him by money order. The Petitioner approached the State Government for making a reference u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the ground that his termination of services was wrongful and actuated by mala fide considerations. The Labour Commissioner, Punjab,--vide his letter dated 24th August, 1972, informed him that it had not been deemed proper "to refer the demand contained therein for arbitration as the same could not be corroborated." Thereafter, the Petitioner made a representation to the Secretary to Government, Punjab, Labour Department, Chandigarh, on 6th September, 1972. He was informed on 26th November, 1972 that his representation was thoroughly considered and rejected. He has filed this petition challenging the action of the Government in refusing to make a reference u/s 10 of the Act.

2. In *The Workmen of the Oswal Weaving Factory Amritsar v. The State of Punjab* 1965 Cri. L.J. 541, a Division Bench of this Court after making an exhaustive discussion of the case law on the subject, held that if an appropriate Government declines to make a reference on the ground that it is not expedient to make a reference in the circumstances of a case, the action of the Government could not be corrected in proceedings under Article 226 of the Constitution. It was also held that a writ of mandamus could issue against the Government if it declined to make a reference without recording the reasons for such refusal and without communicating the same to the parties concerned.

3. The letter dated 24th August, 1972 (Annexure "D") sent by the Labour Commissioner, Punjab, states that it was not deemed proper to refer the demand for arbitration as the same could not be substantiated.

4. The Act has been brought on the statute book for settling disputes between the management and the workers in the interest of industrial peace. At the time when the Government is called upon to consider whether a reference should be made or not, it has to keep before its mind's eye two considerations only, namely, (1) whether an industrial dispute exists or not and (2) whether it would be expedient to make a reference or not. The Government cannot usurp the jurisdiction of an Industrial Tribunal or a Court and give a decision on merits.

5. In *Workmen of the South India Saiva Siddhanta Works Publishing Society, Tirunelveli Ltd. Vs. Government of Madras*, , it was held that though the Government was entitled to come to a conclusion that it was not expedient to make a reference, yet it could not include its own judgment on the propriety or otherwise of the cause of the dispute.

6. In *Government of Madras Vs. Workmen of South India, Saiva Siddhanta Works Publishing Society*, , it was reiterated that the Government could not go to the extent of adjudicating upon the merits of the case. Once the Government comes to the conclusion that there was a prima facie case, it would be duty-bound to refer the same for adjudication by the Tribunal or the Court.

7. In *B. Siddoji Rao v. The State of Mysore and Ors.* AIR 1970 Mys 162, the Court was concerned with the conduct of the Government who refused to make a reference in a dispute arising out of the dismissal of an employee on the ground that the accusation levelled against the worker, in the opinion of the Government, was substantiated or not. The Court observed:

...it was not possible for Government to refuse that reference on the basis of its own opinion as to the truth of that accusation, and especially after the Criminal Court in which the Petitioner was prosecuted had ended in his exoneration....

8. In the instant case also the ground for refusal to make the reference appears to be that the demand made by the worker could not be corroborated. This shows that the Government itself sat in judgment over the case which was to be determined by a statutory tribunal. Even otherwise the order conveyed to the

Petitioner is meagre and cryptic. When the statute lays a duty upon the State Government to give reasons for taking a particular action, then such reasons should be mentioned in a reasonably detailed manner. It is not disputed that the orders passed by the Government u/s 10 read with Section 12(5) of the Act are open to challenge under Article 226 of the Constitution. If such an order is not a speaking order, then this Court cannot proceed to examine whether the reasons given are sufficient for upholding the decision of the Government or not.

Though in exercise of jurisdiction under Article 226 of the Constitution, it is not open to me to compel the Government to make a reference, yet if the order of the Government rejecting the reference suffers from the defects of the type mentioned above, it is open to me to quash the order and to remit the case back to the Government for afresh decision in accordance with law. I, therefore, allow this petition, quash the order dated 24th August, 1972 by which the Petitioner was informed about the inability of the Government to make a reference and direct the State Government to reconsider the matter in the light of the observations made above. The Petitioner will have his costs which are assessed at Rs. 200.