
(2001) 03 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 173 of 2001

Lok Nath Attri

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2

Citation : (2001) 2 LLJ 1084 : (2001) 2 ShimLC 118

Hon'ble Judges : C.K. Thakker, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Y.P.S. Dhaulta, for the Appellant; Sanjay Karol and Vivek Thakur, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—Notice. Learned Advocate General appears and waives service of notice on behalf of respondents No. 1 and 2. In the facts and circumstances of the case, the matter is taken up for hearing today.

2. This petition is filed by the petitioner for appropriate relief directing the respondents 1 and 2 to make a reference under the Industrial Disputes Act, 1947, (hereinafter referred to as the "Act") by quashing and setting aside the order passed by the Labour Commissioner, H.P., Shimla (Annexure-PD) dated September 21, 1998.

3. The case of the petitioner was that he joined services with Mohan Meakin Ltd., Solan respondent No. 3 hereinabove on April 21, 1965. December 4, 1995 was last date of nomination fixed for the election of Zila Parishad. The election was scheduled to be held on December 18, 1995. The petitioner was compelled to submit predated resignation to the Secretary of respondent No. 3 so that he can contest the election. Accordingly, on December 6, 1995, he submitted the resignation which was nothing more than mere formality.

4. According to the petitioner, however, the third respondent company informed

him to receive his gratuity, provident fund and other dues and to settle the account. As the said action was illegal, the petitioner raised a dispute by issuing demand notice at Annexure P-1. He, however, received a communication dated September 21, 1998 declining reference and hence, he approached this Court. He has also stated that the petitioner had filed a petition being CWP No. N2851/1998 titled as Lok Nath Attri v. State of Himachal Pradesh and Ors., and the same was prepared on August 8, 1998, however, it was under objection and was received back on September 15, 1998 which was at serial No. 2565 in the entry register and thereafter, there were again objections and the same was re-filed on July 19, 1999 but it was again returned to the learned Counsel. As asserted in the petition, the petitioner was inquiring about the matter but finally he came to know in January, 2001 that the earlier counsel had misplaced the petition and it was not traceable. Hence, he was constrained to file the present writ petition on January 27, 2001.

5. We have heard Mr. Y.P.S. Dhaulta, learned Counsel for the petitioner. The order passed by the Labour Commissioner reads thus:-

"The undersigned has carefully examined the failure report submitted by the Labour-cum-Conciliation Officer, Solan Distt. Solon, H.P. u/s 12(4) of the Industrial Dispute between Sh. Lok Nath Attri and the Management of the Managing Director, Mohan Meakin Limited, Solan Brewery, Distt. Solan H.P. After careful examination of the said report it has been observed that the worker has resigned from the company on his own after receiving the full and final payments of his legal dues/claims and as such has no cause for reference to the Labour Court.

Therefore, in exercise of the powers vested vide H.P. Government Notification No. 19-8/89 (Shram) dated September 7, 1992 u/s 12(5) of the Industrial Disputes Act, 1947, the undersigned declines to refer this dispute to the Labour Court, H.P. for adjudication."

6. Relying on various provisions of the Act as well as certain decisions of the Hon'ble Supreme Court and High Courts, the learned Counsel for the petitioner contended that it is not open to the appropriate Government to enter into correctness or otherwise of the allegations or averments or to consider merits of the matter. The limited work which is to be undertaken by the appropriate Government is to consider whether an industrial dispute "exists or is apprehended". The Counsel submitted that Section 2(s) defines "Workman" and as the petitioner was working with respondent No. 3, he could be said to be "workman". Similarly, Clause (k) of Section 2 defines "industrial dispute" which means a dispute or difference between "employer" and "employee". Since there was dispute between employee-petitioner and employer- respondent No. 3, it was the duty of the appropriate Government to make a reference.

7. In this connection, our attention was invited by the learned Counsel to a decision of this Court P.C. Thapliyal v. Union of India and Anr 1985 HP 426. In

that case, the question which came up for consideration before this Court related to quantum of punishment imposed on the workman. Reference was refused by the appropriate Government considering the merits of the decision. After considering several decisions of the Supreme Court, this Court held that there was usurpation of the powers by the authorities in refusing reference inasmuch as the Government had entered into the merits of the matter which could not have been done.

8. Similarly, in Salem District Textile Workers Union represented by its The Salem District Textile Workers Union Vs. The State of Madras and Another, the High Court of Madras held that the Government had no power to adjudicate the dispute on merits and it had limited power of forming an opinion whether the industrial dispute "exists or is apprehended".

9. In Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, the Hon"ble Supreme Court after considering earlier decisions, held that refusal to make reference by the State Government on merits could not be held legal and valid and power of formation of opinion by the Government is limited without going into the merits of the matter. In that case, about 900 convoy drivers made certain demands and wanted benefits similar to those which had been granted in favour of other employees. Reference was refused by the appropriate Government on the ground that convoy drivers could not be said to be workmen within the meaning of Section 2(s) of the Act and hence no reference could be made u/s 10(1) of the Act. The Court held that by observing that convoy drivers could not be said to be workmen, the appropriate Government entered into merits of the matter which was not permissible and hence the action was illegal.

10. But the Court further observed that in limited field the appropriate Government could consider for formation of opinion as whether in the given facts and circumstances an industrial dispute "exists or is apprehended". Even prior to that, in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, the Supreme Court observed that the Government is not precluded from considering prima facie the merits of dispute and refuse to refer dispute u/s 10 of the Act. If the claim made is patently frivolous and clearly belated, the appropriate Government may refuse to make a reference.

11. In Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, the Apex Court observed that Section 10(1) confers a discretionary power which can be exercised on being satisfied that an industrial dispute "exists or is apprehended". There must be some material before the Government on the basis of which it can form an opinion that an industrial dispute "exists or is apprehended".

12. In the case on hand, the petitioner himself has stated that he had resigned for contesting the election. Resignation was given in 1995. From that date, therefore, it could not be said that there was relationship of employer and

employee between the petitioner and respondent No. 3, hence it cannot be said that an industrial dispute "exists or is apprehended" and the respondent had exceeded its jurisdiction in refusing reference.

13. Recently, in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, a reference was made by the appropriate Government after about seven years. Holding the reference to be bad, it was observed by the Supreme Court that in the facts and circumstances it could not be said that even after lapse of seven years, it would give rise to industrial dispute and the action taken by the appropriate Government of making reference was held to be illegal.

14. Our attention was invited by the learned Counsel for the petitioner to a decision rendered in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, wherein the Apex Court observed that reference of dispute for adjudication cannot be refused by the Government only on the ground of delay. The expression used in the Act, is "at any time". However, the Court observed that formation of opinion which is an administrative function is to be done by appropriate Government and the Government must be satisfied that an industrial dispute "exists or is apprehended".

15. As in the instant case, there was a formation of opinion by the appropriate Government, the action taken by the appropriate Government could not be said to be bad in law.

16. As there is no illegality or infirmity in the impugned order passed by the Labour Commissioner we see no substance in the petition and it deserves to be dismissed and is accordingly dismissed. No costs.