

(1996) 07 KAR CK 0079
In the Karnataka High Court
Case No : W.A. No. 405 of 1993

Management of Sandoz (India) Ltd.

APPELLANT

Vs

C.C. Joseph and Another

RESPONDENT

Date of Decision : 05-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 12 (3), 18 (3), 2 A

Citation : (1998) 3 LLJ 672

Hon'ble Judges : P. Krishna Moorthy, J;H.N. Narayan, J

Bench : Division Bench

Advocate : K. Kasturi, for the Appellant; K. Subba Rao and V. Gopala Gowda for Respondent No. 1 and M.R. Shanthakumari, for the Respondent

Final Decision : Allowed

Judgement

P. Krishna Moorthy, J.—The second respondent-management in W.P.No. 6456 of 1985 is the appellant. The question involved is as to the scope and ambit of the power of the Government u/s 10(1) of the Industrial Disputes Act, 1947.

2. There were certain demands made by the employees of the appellant company in the year 1981-82. A regular industrial dispute was raised by the Secretary General of the Association of Chemical Workers, Bombay, before the conciliation officer and at the intervention of the conciliation officer, a regular settlement u/s 12(3) read with Section 18(3) of the Industrial Disputes Act was arrived at on December 7, 1981. Under the said settlement, a voluntary retirement scheme was evolved and announced in accordance with the terms of the settlement and was annexed to the said agreement. In terms of the scheme for voluntary retirement, the writ petitioner applied for voluntary retirement by Annexure "6" application on February 18, 1982. The appellant-management accepted the request of the writ petitioner and intimated him by a letter dated March 12, 1982, that he would be relieved with effect from March 30, 1982. In accordance with the above, the petitioner received the sums due to him under the voluntary retirement scheme and also received all other benefits under the

settlement and voluntary retirement scheme and was relieved from duty with effect from March 30, 1982.

3. Thereafter, the petitioner made a request that he may be employed which was refused by the appellant-management. The petitioner raised an industrial dispute before the Labour Commissioner and conciliation officer, Bangalore, u/s 2-A read with Section 12 of the Industrial Disputes Act. The conciliation failed and failure report was sent to the Government u/s 12(4) of the Industrial Disputes Act. Thereafter, the Government issued an endorsement dated December 11, 1984, marked as Annexure "C" stating that the disputes in question are not prima facie industrial disputes and that they did not deserve any adjudication. It was further held that the petitioner having given his willingness for voluntary retirement scheme formulated by the management, it is clearly not a case of discharge or retrenchment and hence the case does not merit reference for adjudication. This order was challenged in this writ petition by the writ petitioner workman on the ground that the Government should have referred the matter for adjudication and that "irrelevant grounds have been, taken note of.

4. The respondent filed a counter-affidavit explaining the circumstances in which the petitioner ceased to be a workman of the company and that he voluntarily left the service under the voluntary retirement scheme envisaged under the settlement entered into between the union and the company. The Government was justified in refusing to refer the matter on the ground that it is clearly not a case of discharge or retrenchment.

5. The learned single Judge allowed the writ petition on the ground that when a complaint is made by an employee that his services have been terminated unlawfully or his employer has refused to employ the petitioner, the matter could only be properly adjudicated on reference to the Labour Court or the Tribunal u/s 10 of the Industrial Disputes Act and that at this stage the Government cannot adjudicate upon the merits of the matter. In that view of the matter, the learned Judge quashed the Annexure "C" order passed by the Government and remitted back the matter for fresh consideration in accordance with law. It is this order that is challenged by the management.

6. Various decisions of the Supreme Court were cited at the Bar by both sides in regard to the scope and ambit of the power of the Government u/s 10(1) of the Industrial Disputes Act. The principle has been succinctly stated in the case of Ram Avtar Sharma and Others Vs. State of Haryana and Another, , and M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, . In the case of Ram Avtar Sharma., (supra), the Supreme Court in paragraph 7 stated as follows :

"Now, if the Government performs an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of the lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute, exists or is

apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons, not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on irrelevant, extraneous grounds or grounds not germane to the exercise of power, it is liable to be questioned in exercise of the power of judicial review. In *State of Bombay v. KP. Krishnan* 1960 19 FIR 61, it was held that a writ of mandamus would lie against the Government if the order passed by it u/s 10(1) is based on or induced by reasons as given by the Government which are extraneous, irrelevant and not germane to the determination. In such a situation, the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. May be, the Court may not issue a writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy."

In the case of *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, the Supreme Court held that while dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4), the appropriate Government may consider prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making reference would be expedient or not, on disputed question of fact the appropriate Government cannot purport to reach a final conclusion, for that again would be the province of the Industrial Tribunal and if the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. We need not reproduce all the decisions of the Supreme Court on the subject for they were all considered by the Division Bench of the Gujarat High Court in 1991 2 LLN 125. After analysing the law on the subject and after considering all the decisions on the subject in paragraph 12, their Lordships of the Gujarat High Court held as follows :

"From the aforesaid various judgments, it can be said that u/s 10(1) of the Industrial Disputes Act, the Government or the concerned authority, can prima facie decide from the evidence whether the person raising the industrial dispute is a "workman" within the definition of Section 2(s) of the Industrial Disputes Act. Consideration of prima facie evidence would not empower the State Government to adjudicate the dispute of law or facts and decide it finally. But from the record, if it is apparent without any detailed investigation that the person raising the industrial dispute is not a "workman" as defined u/s 2(s) of the Act, then the Government is entitled not to make a reference by assigning reasons for doing so as provided u/s 12(5) of the Industrial Disputes Act."

7. From the aforesaid decisions, it is clear that there is power in the Government to consider prima facie the merits of the dispute and decide as to whether it would be expedient or not to refer the matter for adjudication. It is no doubt true that a disputed question of fact or law cannot be decided by the Government at this stage. But certainly the State Government can prima facie examine the merits of the claim made and if it is frivolous or vexatious, it can certainly decline to make a reference. It is in the light of this principle that the case on hand has to be considered.

8. It is an admitted fact that the petitioner applied for voluntary retirement on the basis of the voluntary retirement scheme which was evolved in a settlement between workers union and the management under Sections 12(3) and 18(3) of the Act. The petitioner availed of the benefits given to him under the voluntary retirement scheme and based on the request by the petitioner, the management retired him voluntarily and discharged his services by paying him the benefits due under the voluntary retirement scheme. There is no case for the petitioner that he was made to apply under the voluntary retirement scheme by any coercion or undue influence or misrepresentation. It is pertinent to note that the allegations made by the petitioner in Annexure "A", dated October 30, 1982, which is a representation submitted by him before the Labour Court and the conciliation officer. Paragraph 2 of that representation reads as follows:

"In the year 1981-82, the employees of the company all over the country resorted to agitations to press home their reasonable and legitimate demands. The management of the company which had not taken kindly to these legitimate activities devised an ingenious method to do away with the services of the employees who have bona fide put in long years of service in the company. With this bona fide object in view the company made it appear to the employees like M that the company will close down its operations all over the country and take up winding up. The company published a voluntary scheme whereby the management promised to pay the employees who resigned their job pursuant to the voluntary scheme, terminal benefits much more than what the provisions of the Industrial Disputes Act provide for. Believing the statements of the management that it is closing down its operation all over the country and the voluntary scheme has been announced with bona fide intention to be true, I and other employees in the Bangalore branch of the company submitted resignations agreeing to abide by the terms of the voluntary scheme. As per the settlement entered into by the management with the union the terminal benefits are to be paid in instalments. Final instalments will have to be given by the management in the month of April, 1983."

9. Reading of the above paragraph would show that the challenge by the petitioner was against the very retirement scheme itself which is part of the settlement entered into between the workers union and the management under Sections 12(3) and 18(3) of the Industrial Disputes Act, 1947. It is not as if that the submission of his application for voluntary retirement is in any way vitiated.

The challenge is to the settlement itself which the petitioner is not entitled to make.

10. The dispute in question can at best become an industrial dispute only u/s 2-A of the Industrial Disputes Act which deals only with discharge, dismissal, retrenchment or otherwise terminating the service of individual workman. The petitioner was retired from service on the basis of voluntary retirement scheme which was a part of settlement between the management and the workers. In the representation, Annexure "A", and from the allegations in the writ petition, it is clear that the petitioner is only challenging the settlement on certain vitiating circumstances. Apart from saying in Annexure "A" that he was unemployed, since his forced resignation, there is no allegation in the representation given before the authorities nor in the writ petition that he was made to apply for voluntary retirement due to any vitiating circumstances. On reading of the allegations, it is clear that he voluntarily applied for voluntary retirement under the scheme formulated under the settlement. If his dispute is regarding settlement that cannot become an industrial dispute u/s 2-A of the Industrial Disputes Act. As stated earlier, the termination of the services of the petitioner being under voluntary retirement scheme, it cannot come within the purview of Section 2-A of the Industrial Disputes Act. If so on a prima facie consideration of the materials, we are satisfied that the Government was justified in refusing to make a reference in the circumstances of the case. The learned single Judge was, therefore, not right in allowing the writ petition and we set aside the same.

In the result, we allow this appeal, set aside the judgment of the learned single Judge and dismiss W. P. No. 6456 of 1985.