
(2008) 01 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4817 of 2004

Mohan Chaudhary And Others

APPELLANT

Vs

State of U.P.And others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2008) 01 AHC CK 0117

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioners, who are eight in number, have filed present writ petition, questioning the validity of order dated 26/287.2003 and 30.12.2003, Annexures 5 and 9 respectively, wherein Deputy Labour Commissioner exercising delegated authority of State Government has refused to refer the dispute to the Labour Court for being adjudicated under Section 4K of the U.P. Industrial Disputes Act, 1947.

2. Facts, in brief, of the case are that petitioners claim that they were employees of Pratappur Sugar and Industries Limited, Pratappur, Deoria with effect from 2.12.2002 and they had been restrained from working and ultimately, they were taken out of job without any notice or wages in lieu of notice. Separate applications were moved before the Conciliation Officer intimating/complaining the disengagement. On said applications being moved, C.P. Case Nos. 1 to 16 were registered on 3.3 2003 and notices were issued to petitioners and the Manager of the establishment concerned by the Conciliation Officer. Petitioners submit that pursuant to said notices, written statement was filed and thereafter impugned order has been passed refusing to refer the dispute, and mentioning therein that since the workmen were not able to produce any document in relation to their employment and the same is not on record book. Petitioners filed review application in order to show and establish that they were workmen. Pending review application, petitioners submit that State Government on

20.11.2003 has referred the dispute of 129 persons (Reference No. 2 (13) of 2003), including petitioners, for payment of bonus. However, review application has also been dismissed. At this juncture present writ petition has been filed.

3. In the present writ petition, counter and rejoinder affidavits have been exchanged and the case has been taken up for final hearing and disposal with the consent of the parties.

4. Sri J. P. Singh, learned Counsel for the petitioner, contended with vehemence that once there was industrial dispute inter s0 employees and employer, then in all eventuality, dispute in question ought to have been referred for, maintaining industrial peace, and in the present case authority of labour Court has been usurped by not making reference and adjudicating the factual dispute, holding that petitioners are not workmen, as such impugned order is unsustainable and liable to be set aside.

5. Learned Standing Counsel, as well as Sri V.K. Singh, Advocate, appearing for Pratappur Sugar and Industries Limited, on the other hand, contended with vehemence that in the present case rightful order has .been passed and no interference is required.

6. After respective arguments have been advanced, factual position which emerges is to the effect that petitioners have been claiming that they are workmen of Pratappur Sugar and Industries Limited, Pratappur, Deoria, and claim to have been restrained from working with effect from 2.12,2002 and ultimately have been thrown out of job without complying with the provisions of U.P. Industrial Disputes Act, 1947. In conciliation proceedings, notices were issued to both sides and thereafter on 26.7.2003 information had been furnished that dispute in question was not worth referring and the same has been consigned to record room. Petitioners, thereafter filed review application taking therein a specific plea that employer, at no point of time, had issued any appointment letter and their entire claim was based on attendance card and as such attendance register is the only criteria, on the basis of which it could be found out that petitioners are in the employment of the said establishment and the same should be summoned and the dispute in question be referred to Industrial Court. Said application for review has been considered and the Deputy Labour Commissioner has proceeded to mention that from the attendance register produced, it does not reflect that the petitioners were workmen and coupled with this reliance has been placed on the reference made in, respect of bonus matter, and in this background, application was rejected on the ground that petitioners failed to prove that they were in the employment of the respondent establishment. Here, in the present case, petitioners are claiming to be workmen and this fact was seriously being disputed by the respondent establishment. Petitioners have placed reliance on attendance register. As to whether said attendance was in respect of respondent establishment or not, the document ought to have been proved by way of evidence. In respect of P.P. proceedings, State Government has already referred this question in respect of

other workmen, including petitioners, for decision as to whether the incumbents were workmen or not. Petitioners are claiming that as there was already reference in this regard, then it would have been much more appropriate to refer the matter to the Labour Court for being adjudicated, wherein this question could have also been adjudicated, after giving opportunity to both the parties. In the present case, the order which has been passed is totally unreasonable and cryptic one and the second order which has been passed on review application is also unjustifiable for the simple reason that as to whether attendance register was hi respect of respondent establishment or not required evidence and the Same could have been much Wore effectively adjudicated by Labour Court, and coupled with this there was already a reference in respect of P.P. matter. Hon"ble Apex Court in case of Telco Convoy Drivers Mazdoor Sangh and another v. State of Bihar and others, (1989) 3 SCC 271, has taken the view that the dispute, whether the persons raising the dispute are workmen or not, cannot be decided by the Government in exercise of its administrative function under Section 10 (1) of the Act, and whether there was relationship of employer and employee or not, the same should have been decided by Industrial Tribunal and the State Government has clearly failed to discharge its duties. Paragraphs 11 to 17 of the judgment being relevant, are(quoted below:

"11. It is true that in considering the question of making a reference under .Section 10(1), the Government is entitled to form an opinion as to whether an ^industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute , itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly not permissible.

12. It is, however, submitted on behalf of f ELGO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in Section 2(k) of the Act It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one pf the factors that has to be considered by the Government is whether the persons who are raising the disputes are workmen of not within the meaning of the definition as contained in Section 2(k)of the Act.

13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, white exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function

and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the Us, which would certainly be in excess of the power conferred on it by Section 10 of the Act. [See Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686: AIR 1985 SC 915 M.P. Irrigation Karamchari Sangh v. State of M.P, (1985) 2 SCR 1019: AIR 1985 SC 860 Shambhu Nath Goya/ v. Bank of Baroda, Jullundur, (1978) 2 SCR 793: AIR 1978 SC 1088].

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of, the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained.

16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference, under Section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. [See Sankari. Cement Alai Thozhiladar Munnetra Sangam v. Govt. of Tamilnadu, (1983) 1 Lab LJ 460 Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686: AIR 1985 SC 915 M.P.Irrigation Karamchari Sangh v. State of M.P., (1985) 2 SCR 1019: AIR 1985 SC 860 Nirmal Singh v. State of Punjab, (1984) 2 Lab LJ 396: AIR 1984 SC 619].

17. In the circumstances, we direct the State of Bihar to make a reference under Section 10(1) of the Act of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh by its letter dated October 16, 1986 addressed to the General Manager TELCO (Annexure R4/1 to the Special leave Petition), to an appropriate Industrial Tribunal within one month from today."

7. Hon"ble Apex Court in the case of Dhanbad Colliery Karmchari Sang/7 v. Union of India and others, 1991 Supp (2) SCC10, also discarded the practice of refusing to refer the dispute for adjudication and took the view that the Government cannot itself decide the dispute wherein workmen were claiming that they were engaged by a contractor without obtaining a licence, and in fact, they were under the direct employment of the establishment. Paragraphs 2 and 3 of the said judgment being relevant are quoted below:

"2. The appellant Union raised a dispute that the workmen employed in the mines run and maintained by M/s. Bharat Coking Coal Ltd., Lodha Area, Dhanbad were engaged by a contractor without obtaining a licence and in fact the workmen were under the direct employment of the management of M/s. Bharat Coking Coal Ltd. They claimed a relief for declaration to that effect. The women approached the Central Government for referring the dispute to Industrial Court under Section 10 of the Industrial Disputes Act, 1947. The Central Government by its order dated May 5, 1989 refused to refer the dispute on the ground that Union had failed to establish that the workmen were engaged in prohibited categories of work under the Contract Labour (Regulation and Abolition) Act, 1970 and further that they were engaged by contractor and not by the management of the respondent company. The Government further held that there appeared to be no employer-employee relationship between the management of the respondent company and the workmen involved in the dispute. The appellant challenged the government's order before the High Court by means of writ petition but the same was " dismissed in limine. Hence this appeal.

After hearing learned "counsel for the parties and having regard to the facts and circumstances of the case, we are of the opinion that this appeal must succeed. The Central Government instead of referring the dispute for adjudication to the appropriate Industrial Court under Section 10 of the Industrial Disputes Act, 1947, it itself decided the dispute which is not permissible under law. We accordingly allow the appeal, set aside the order of the High Court and of the Central Government and directed the Central Government to refer the dispute for adjudication to the appropriate Industrial Court under Section 10 of the Industrial Disputes Act, 1947. We further direct the Central Government to make the reference within three months."

8. Following the aforesaid principle as enunciated by Hon"ble Apex Court, here also Deputy Labour Commissioner has totally misdirected itself by proceeding to decide as to whether petitioners were workmen or not and there is complete failure on his part in not referring the dispute to Industrial Court rather

proceeding to answer such question on surmises and conjectures against the workmen.

9. Consequently, writ petition succeeds and is allowed. The impugned orders dated 26/28.7.2003 and 3.12.2003 (Annexures 5 and 9 respectively) are quashed and set aside. Deputy Labour Commissioner, Gorakhpur is directed to refer the dispute, within two months from the date of receipt of a certified copy of this order, for being adjudicated by Labour Court, in accordance with law.