
(2017) 03 CAL CK 0090
In the Calcutta High Court
Case No : 15864 (W) of 2005

M/s. Peerless Inn

APPELLANT

Vs

Fourth Industrial Tribunal & Ors.

RESPONDENT

Date of Decision : 29-03-2017

Acts Referred:

Constitution of India, Article 226, Article 12 - Power of High Courts to Issue certain writs - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous distr

Citation : (2017) 03 CAL CK 0090

Hon'ble Judges : Arijit Banerjee

Bench : SINGLE BENCH

Advocate : Ranjay De, ?Basabjit Banerjee, Soumya Majumdar, ?Balaram Patra, ? Suvadip Bhattacharya

Judgement

1. In this writ application the petitioner company challenges an order of reference dated 15 March, 2005 made by the Government of West Bengal of an industrial dispute between the petitioner and 19 of its workman in exercise of power under Sec. 10 of the Industrial Disputes Act, 1947 (in short the "ID Act"). The short contention of the petitioner is that no industrial dispute within the meaning of the ID Act exists and hence the reference is incompetent and without jurisdiction.

2. Between 12 December, 2001 and 29 December, 2001, 19 employees of the petitioner were served with charge sheets containing allegations of various acts of misconduct. They were placed under suspension with effect from the respective dates of the charge sheets. A dispute regarding suspension of the said workmen was raised by the respondent nos. 3 and 4 unions. A conciliation proceeding was initiated and ultimately by an order dated 15 March, 2005, the Government of West Bengal referred the following disputes for adjudication before the respondent no. 1 Tribunal: "Whether the suspension of Shri Rajesh Sharma and 18 others (vide list enclosed) from the services by the management

with effect from the date mentioned against each in the list is justified?

What relief are the workmen entitled to?"

Contention of the petitioner:-

3. Mr. Ranjay De, Learned Counsel appearing on behalf of the petitioner submitted that an order of suspension pending domestic enquiries is purely a contingent measure and not a punishment and has not amenable to judicial review. The suspension orders were passed pending enquiry/disciplinary action in terms of Rule 29III (A) of the Service Condition/Rules of Peerless Hotels Limited. The said Rule reads as follows:- " Suspension pending disciplinary action: A workman against whom the disciplinary action is proposed to be taken and/or when a police enquiry is going on against a workman, he may be suspended from work. Such suspension may be at any time either before issuance of Show Cause Notice/charge sheet or simultaneously with the Show Cause Notice/charge sheet or later depending upon the circumstances. Such suspension pending show cause notice/charge sheet/enquiry etc., will not be treated as a substantive punishment.

The suspension and subsistence allowance for such suspension will be governed according to the provision of the West Bengal Payment of Subsistence Allowance Act."

4. Mr. De submitted that before an order of reference can be made by the appropriate Government to the Tribunal, there must exist an industrial dispute within the meaning of the ID Act. In this connection he referred to Sec. 2(k) of the ID Act which defines "industrial dispute" as any dispute or difference between the employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. He then referred to Sec. 7A of the ID Act and also to the Third Schedules to the ID Act which specifies the matters within the jurisdiction of the Industrial Tribunals. He submitted that the entries in the Third Schedule do not cover suspension pending domestic enquiry or disciplinary proceeding and as such propriety or otherwise of such suspension cannot be adjudicated upon by the respondent Tribunal.

5. Learned Counsel relied on a decision of a Division bench of this Court in the case of Birla Corporation Ltd. (Unit Soorah Jute Mill) Sramik Union-vs.-Birla Corporation Ltd., 2008 (4) CHN 592. In that case at paragraph 54 of the judgment the Hon'ble Division Bench held as follows:- "54. Industrial Tribunal is empowered to adjudicate industrial disputes relating to any matter mentioned in the Second and Third Schedule. In the present case, the dispute referred to the Industrial Tribunal by the impugned order of reference dated 19 December, 2005 is not relating to any matter specified in the Second and Third Schedule and, therefore. Industrial Tribunal cannot have any jurisdiction to adjudicate the same."

6. Learned Counsel then submitted that suspension pending enquiry/disciplinary proceedings does not constitute an industrial dispute within the meaning of Sec. 2(k) of the ID Act. There is no allegation on the part of the respondent unions regarding non-payment of subsistence allowance. There is no challenge to the provisions of the Service Conditions/Rules empowering the management to place a workman under suspension pending or in contemplation of domestic enquiry. The present case does not relate to non-employment. No dispute has been raised by the respondent unions regarding the terms of employment or conditions of labour. Had the management placed the concerned workmen under suspension without there being any provision in the Service Conditions/Rules in that regard, or had there been any dispute pertaining to subsistence allowance, the same might have come within the purview of dispute connected with the employment or terms of employment or conditions of labour. However, none of these ingredients are present in the instant case. Hence, the reference to the Tribunal is without jurisdiction.

7. As regards the concept of suspension, Mr. De relied on two decisions of the Hon"ble Apex Court. In *State of Punjab-vs.-Jaswant Singh Kanwar*, 2013 (9) SCALE 671, at paragraph 13 of the judgment of the Hon"ble Apex Court observed as follows:- "13..... The term "Suspend" would mean "to debar usually, for a time, from any privilege, the execution of an office or from the enjoyment of an income." It is temporary deprivation of office or privilege. By reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to the same discipline and penalties and to the same authorities". The above definition makes it clear that during the period of suspension, all the privileges and benefits attached to the office is temporarily suspended unless the period of suspension is considered as the period spent on duty."

In *State of Bihar-vs.-Arbind*, 2013 (10) SCALE 89, at paragraph 9 of the judgment the Hon"ble Apex Court observed as follows:-

"9..... It is settled in law that an order of suspension never puts an end to the service of an employee. He is only not entitled to the salary but is eligible to get the subsistence allowance. It has been held in *Khem Chand v. Union of India* and others, AIR 1963 SC 687, that the effect of an order of suspension is that though the employee continues to be a member of the service he is not permitted to work and is paid only subsistence allowance which is less than his salary. The said principle has been reiterated in *The State of Madhya Pradesh v. The State of Maharashtra* and others, AIR 1977 SC 1466 ."

8. Learned Counsel then submitted that suspension pending enquiry cannot be construed as a punishment. In this connection, learned Counsel referred to the decisions of the Hon"ble Apex Court in *Lakshmi Devi Sugar Mills Ltd.-vs.-Ram Sarup*, AIR 1957 SC 8 2, para 18 and *Eenadu Press Workers Union-vs.-The Government of AP*, 1979 Lab IC 330. I shall revert back to these judgments later. Mr. De then submitted that it is clear that suspension pending enquiry neither

constitutes punishment nor is a matter covered by Schedule III of the ID Act. Hence, the issue of justification or otherwise of such suspension could not be referred to the respondent Tribunal for adjudication. The Tribunal does not have jurisdiction to decide such an issue. Under Sec. 10 of the ID Act the appropriate Government discharges its administrative function while referring a matter for adjudication and such an action can always be challenged by way of judicial review. In this connection Mr. De relied on a Supreme Court decision in *Ram Avtar Sharma-vs.-State of Haryana*, 1985 (1) LLJ 187 (SC) . Mr. De relied on paragraph 6 of the judgment which reads as follows:-

"6. Now if the Government performs an administrative act while either making or refusing to make a reference under S. 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by S. 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 exercise of power. If the administrative determination is based on the irrelevant, extraneous 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. K. P. Krishnan* (1960) 2 LLJ 592, it was held that a writ of mandamus would lie against the Government if the order passed by it under Sec. 10(1) is based or induced by reasons as given by the Government 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. Maybe, the court may not issue 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."

9. Learned Counsel also referred to the case of *Rai Sahib Ramdayal Ghasiram Oil Mills and Partnership Firm-vs.-Labour Appellate Tribunal*, AIR 1963 (II) LLJ 65, wherein the Hon''ble Apex court observed, inter alia, that wide though the powers of an Industrial Tribunal are while adjudicating upon industrial disputes, it cannot arrogate to itself powers which the legislature alone can confer or do something which the legislature has not permitted to be done.

10. Learned Counsel finally submitted that when a statute provides for something to be done in a particular manner, it can be done in that manner alone and all other modes of performance are forbidden. In this connection he referred to the Supreme Court decision in the case of *Chief Information Commissioner-vs.-The State Manipur*, 2011 (13) SCALE 46 0, wherein the Hon''ble Apex Court

referred to, inter alia, the celebrated decisions in the cases of Taylor-vs.-Taylor, (1876) 1 CH. D. 426 and Nazir Ahmad-vs.-Emperor, AIR 1936 PC 253 .

11. On the basis of the aforesaid submission Mr. De prayed for quashing of the impugned order of reference. Contention of the respondents:-

12. Appearing on behalf of the respondent unions, Mr. Soumya Majumdar, Learned Counsel submitted that the reference proceedings are pending for the last 11 years. The management is prolonging the proceeding by adopting diverse dilatory tactics. He submitted that the present case is a classic example of victimizing and crushing the poor workmen by placing them under prolonged suspension for more than a decade. Out of the 19 workmen, 12 have either resigned or passed away.

13. As regards the maintainability of the reference, learned Counsel submitted that Section 10 (1)(d) of the ID Act empowers the appropriate Government to refer an industrial dispute either to a Labour Court or to an Industrial Tribunal for adjudication. The said Section clothes the Government with power to refer the dispute or any matter appearing to be connected with or relevant to the dispute irrespective of the same being related to any matter specified in the Second and Third Schedule. The Second and Third Schedules to the ID Act, therefore, lose significance in respect of an adjudicable issue in a reference.

14. Mr. Majumdar submitted that if the petitioner's argument is to be accepted then a matter/dispute which is not mentioned in either of the two Schedules to the ID Act would become incapable of adjudication by Labour Court or Industrial Tribunal. Issues like unfair labour practice or victimization or mala fide transfer of workmen or employing workmen as badlis or casuals or temporaries for years together without regularizing them, do not find mention in the Second or Third Schedule to the ID Act. Although, these types of issues find place in the Fifth Schedule, if the petitioner is correct, the said issues would not constitute adjudicable industrial disputes, although the same would come within the substantive definition clause in the principal Act. The petitioner's argument, if accepted, will result in holding that the Schedules to the ID Act control the substantive provisions of the principal Act, which is obviously an unacceptable proposition. The Second and Third Schedules to the ID Act cannot have better effect than that contemplated by the definition of "Schedule" in Section 2 (52) of the General Clauses Act. In this connection, learned Counsel relied on a decision of the Hon'ble Supreme Court in the case of Jagdish Prasad-vs.-State of Rajasthan, (2011) 7 SCC 789 .

15. Mr. Majumder then submitted that although the High Court undoubtedly has jurisdiction under Article 226 to interfere with an order of reference, such power is to be sparingly exercised only when there is lack of authority and jurisdiction in making the order of reference. Making of an order of reference is an administrative act which is an expression of subjective formation of opinion of the appropriate Government. He submitted that when a reference is made there

is a presumption of existence of an "industrial dispute" although such presumption is rebuttable. Such presumption can be rebutted only by adducing evidence and this can be done only before the Tribunal and not in a writ proceeding. In this connection learned Counsel relied on a Division Bench decision of this Court in the case of *M/s. Reckitt & Colman of India, Ltd.-vs.-Fifth Industrial Tribunal*, 1980 LAB IC 92.

16. Mr. Majumdar then submitted that no doubt an employer has a right to suspend his employee. However, whether or not such right has been exercised in a justified manner without being actuated by malice, is a triable issue. This can only be done on scrutinizing the evidence before the Tribunal.

17. Learned Counsel then submitted that it is only because a special form has been created by the ID Act that the "workmen" are required to approach the Industrial Tribunal or Labour Court for adjudication of industrial disputes. Subject to exercise of discretion by the High Court, even a workman can invoke the writ jurisdiction of the High Court in respect of a dispute regarding suspension, if the employer is an "authority" or "State" within the meaning of Article 12 of the Constitution of India.

18. Mr. Majumdar submitted that suspension is a civil death for an employee. Prolonged suspension has always been deprecated by the Courts of law although the employer's right to suspend an employee is judicially recognized. In the instant case, the orders of suspension were passed more than 15 years ago. An act which might have been justified at its inception may become unjustified with lapse of time, like "lockout". It might be justified on the date of its declaration, but it might become unjustified by reason of its continuance for a long period of time. So also, is the case with a suspended employee. Learned Counsel submitted that these are all triable issues and whether or not the suspension of the 19 workmen was justified has to be decided on facts by the Tribunal. The Government of West Bengal has certainly not exceeded its jurisdiction in making the reference.

19. Mr. Majumdar then referred to the Black's Law Dictionary and submitted that "justification" means, (i) a lawful or sufficient reason for one's acts or omissions; any fact that prevents an act from being wrongful; (ii) a showing, in court, of a sufficient reason why a defendant did what the prosecution charges the defendant to answer for. Learned Counsel submitted that viewed from this angle the sufficiency of the reasons for placing the 19 workmen under suspension can only be adjudicated on the basis of facts pleaded and evidence adduced for which the Industrial Tribunal is the appropriate forum as mandated by the ID Act. On the strength of his aforesaid submissions, Mr. Majumdar prayed for dismissal of the writ petition and for an order directing the respondent Tribunal to pronounce its award within a stipulated period of time.

20. The respondent Tribunal is a creature of statute i.e. the ID Act. Like any other statutory creature, the functions of the respondent- Tribunal are prescribed

by the parent statute and its powers and jurisdiction are circumscribed by the ID Act. It can adjudicate only upon those issues which have been statutorily prescribed. If it entertains any matter beyond what the statute permits, it will be clearly acting without jurisdiction. It has no inherent power to do justice like the Civil Courts.

21. The short question that falls for determination in this writ application is whether or not the order of reference dated 15 March, 2005 made by the Government of West Bengal to the respondent Tribunal is without jurisdiction and hence liable to be quashed. The answer to this would depend on whether or not an order of suspension of an employee in contemplation of or pending domestic enquiry is an industrial dispute within the meaning of Sec. 2(k) of the ID Act and referable to an Industrial Tribunal under Section 10(1) of the ID Act.

22. Sections 2(k), 7(A)(1) and 10(1) of the ID Act read as follows:-

"S. 2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

7A. Tribunals.-(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule (and for performing such other functions as may be assigned to them under this Act.)

10. Reference of disputes to Boards, Courts or Tribunals.-(1) (Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time), by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[(c)refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or]

[(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause(c)]

[Provided further that] where the dispute relates to a public utility service and a

notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

[Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]"

23. The Second and Third Schedules referred to in Sections 7(1) and 10 of the Act read as follows:- "The Second Schedule

Matters within the jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

The Third Schedule

Matters within the jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
 2. Compensatory and other allowances;
 3. Hours of work and rest intervals;
 4. Leave with wages and holidays;
 5. Bonus, profit sharing, provident fund and gratuity;
 6. Shift working otherwise than in accordance with standing orders;
 7. Classification by grades;
 8. Rules of discipline;
 9. Rationalisation;
 10. Retrenchment of work and closure of establishment;
- and

11. Any other matter that may be prescribed."

24. Mr. De's contention is that an Industrial Tribunal can only adjudicate upon industrial disputes relating to any matter specified in the Second Schedule or Third Schedule. That is the limited jurisdiction of an Industrial Tribunal. Since the order of suspension pending domestic enquiry/disciplinary proceeding passed in pursuance of applicable Service Rules, is not a matter included in the Second and Third Schedules, the Industrial Tribunal has no jurisdiction to decide the justifiability or otherwise of a suspension order. His further contention is that the suspension order in contemplation of domestic enquiry/disciplinary proceedings does not constitute an industrial dispute within the meaning of Section 2(k) of the ID Act and is thus not capable of being referred to the Industrial Tribunal under Section 10 of the Act.

25. I am unable to agree with the contention of Mr. De. My reasons are as follows.

26. "Industrial dispute" has been defined in Sec. 2(k) of the ID Act. It is clear from the definition extracted above that the term includes any dispute or difference between employer and workmen which is connected with the employment or terms of employment of any person. The Service Conditions/Rules framed by the petitioner company indisputably form terms of employment of the employees and workmen employed by the company. Rule 29III (A) of the Service Conditions/Rules of the petitioner company permits the company to place a workman under suspension in contemplation of a disciplinary action. If the union raises a dispute regarding the justifiability of exercise of the said power by the management in respect of some of the workmen, the same in my opinion, would be a dispute connected with the employment or terms of employment of the workmen. Consequently, the same would be an industrial dispute within the meaning of Sec. 2(k) of the ID Act.

27. It is true that suspension can be of two types. One is by way of punishment. The other is suspension pending or in contemplation of disciplinary proceeding. It is well-established that penal suspension is an industrial dispute referable to the Industrial Tribunal. Mr. De would argue that a suspension in contemplation of disciplinary proceeding, however, is not an industrial dispute. Accepting such contention, in my view, would not only be doing violence to the language of Sec. 2(k) but also would be contrary to the object, spirit and intent of the ID Act. Theoretically speaking, the power to suspend a workman can be abused or misused by the Management. It is possible that a proposed disciplinary proceeding against some of the workmen may be actuated by the malice or to victimize such workmen. In such cases, the suspension order in contemplation of such malicious disciplinary proceeding would also be tainted by malice. Not for a moment am I suggesting that this is what has happened in the present case. I am only giving an example. If a suspension order has been issued maliciously and to victimize the workman concerned ostensibly in contemplation of a disciplinary proceeding can it be said that the Union cannot raise an industrial

dispute regarding such suspension? To my mind the answer must be in the negative.

28. Prior to the year 1947, industrial disputes were being settled under the provisions of the Trade Disputes Act, 1929. However, over time various defects/lacunae in the said Act came to light which needed to be overcome by fresh legislation. Accordingly, the Industrial Disputes Act, 1947 was promulgated. One of the major objects of the Act was to promote industrial peace and advance smooth functioning of the industries in the country. Under the provisions of the Act, a reference to an Industrial Tribunal will lie where the parties to an industrial dispute apply for such reference and also where the appropriate Government considers it expedient so to do. The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievance of the parties thereto. In my view, if the definition of the term "industrial dispute" in Sec. 2(k) of the ID Act is understood in the proper perspective, suspension of workmen in contemplation of disciplinary proceedings must also be held to be an industrial dispute referable to the Industrial Tribunal. We have to bear in mind that the ID Act provides as friendly and peaceful a mechanism as possible for resolution of the disputes between the Management and the employees/workmen, with the object that such disputes do not interrupt and jeopardise the functioning of the industries during the process of resolution of the disputes. If that be so, one must construe the term "industrial dispute" in a liberal and expansive manner to the extent possible without doing violence to the language of Sec. 2(k), rather than ascribing a restrictive meaning to that phrase. If the workmen do not have an accessible and efficacious remedial process available to them for redressal of their grievance regarding suspension of some of them, be it in contemplation of disciplinary proceedings, they might legitimately feel cornered and resort to such course of action as would not be conducive to the peace and harmony that must exist between the Management and the employees/workmen of an establishment. It may also be noted that Sec. 3(1) of the Industrial Employment (Standing Orders) Act, 1946 provides that within six months from the date on which the Act became applicable to an industrial establishment, the employer had to submit to the certifying officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. Under Sec. 3(2) of that statute, provision had to be made in such draft for every matter set out in the Schedule to the Act which may be applicable to the industrial establishment. This was mandatory. Item No. 9 to the Schedule of the said Act is suspension or dismissal for misconduct and acts or omissions which constitute misconduct. This also lends support to my view that issue of suspension is connected with the employment or terms of employment of workmen in an industrial establishment.

29. I am unable to accept the contention of Mr. De that since suspension does not find mention in the Second or Third Schedule to the ID Act, it is not an industrial dispute referable to an Industrial Tribunal. It is true that the word

suspension is not to be found in the Third Schedule. However, Item No. 8 of the Third Schedule is "Rules of discipline". Rule 29III (A) of the Service Conditions/ Rules of the petitioner company is nothing but a part of the rules of discipline. It is a rule which empowers the Management to suspend a workman in contemplation of a disciplinary proceeding. Such a rule making a workman vulnerable to suspension cannot be anything but a rule of discipline. Hence, if the union of workmen raises a dispute regarding such suspension, it would in my opinion, be a matter covered by the Third Schedule and referable to the Industrial Tribunal for adjudication.

30. Looking at the matter from another angle, Item No. 6 of the Second Schedule to the ID Act brings "all matters other than those specified in the Third Schedule", within the purview of the Second Schedule. This would include an order of suspension. One may possibly argue that the Second Schedule enumerates matters which are within the jurisdiction of Labour Courts and not Industrial Tribunals. This argument cannot be accepted for the simple reason that Sec. 10(1)(d) of the ID Act empowers the appropriate Government if it is of the opinion that any industrial dispute exists or is apprehended to refer such dispute or any matter appearing to be connected with or relevant to such dispute to a Tribunal for adjudication, whether it relates to any matter specified in the Second Schedule or the Third Schedule. (Emphasis is mine). Thus, any matter which is or which is deemed to be included in the Second Schedule can also be referred to by the appropriate Government to the Industrial Tribunal. It is the discretion of the appropriate Government as to whether the dispute should be referred to a Labour Court or to an Industrial Tribunal and unless the exercise of such discretion is absolutely perverse or otherwise challengeable on any of the recognized grounds for judicial review, the court will not interfere with exercise of such discretion.

31. Mr. De has relied on the decisions of the Hon"ble Apex Court in *State of Punjab-vs.-Jaswant Singh Kanwar* (supra), and *State of Bihar-vs.-Arbind* (supra) to explain what is the meaning and effect of suspension in law. I have extracted relevant portions of the said two judgments above, and there can be no two views about the meaning and effect of the term "suspend" as explained by the Apex Court. Sec. 2(f) of the West Bengal Payment of Subsistence Allowance Act, 1969 also defines suspension as an interim decision of an employer as a result of which an employee is debarred temporarily from attending his office and performing his function in the establishment where he is employed. A suspended employee is for the time being debarred from enjoying the privileges of the post held by him. He does not lose the post.

32. Mr. De relied on *Lakshmi Devi Sugar Mills Ltd.-vs.-Ram Sarup* (supra) and *Eenadu Press Workers Union-vs.-The Government of AP* (supra) in support of his submission that suspension pending enquiry cannot be construed as a punishment. I refrain from dealing with the said two decisions since I have not proceeded on the basis that in the facts of the present case the orders of

suspension were punitive and in my view an apparently non-punitive order of suspension in contemplation of or pending disciplinary proceedings can also be the subject matter of reference to an Industrial Tribunal in so far as justifiability of such order is concerned. Mr. De referred to *Ram Avtar Sharma-vs.-State of Haryana* (supra) to contend that the reference of an industrial dispute under Sec. 10 (1) of the ID Act is an administrative act on the part of the Government which is amenable to judicial review. I entirely agree and as the Apex Court laid down in that case, if the administrative determination is based on irrelevant, extraneous grounds or grounds not germane to the exercise of the power, it is liable to be challenged before a Writ Court. I also accept the contention of Mr. De that the Industrial Tribunal cannot give itself the power which the legislature alone can confer on it and that the Industrial Tribunal cannot do something which the legislature has not permitted to be done by it. Hence, I refrain from dealing with the decision in *Rai Sahib Ramdayal Ghasiram Oil Mills and Partnership Firm-vs.-Labour Appellate Tribunal* (supra) cited by Mr. De in support of the aforesaid contention.

33. Mr. De has placed strong reliance on an observation of a Division Bench of this Court in *Birla Corporation Ltd.* (supra), to the effect that the dispute referred to the Tribunal in that matter not being related to any matter specified in the Second or Third Schedule, the Tribunal did not have jurisdiction to adjudicate the same. In that case, the dispute that had been referred to the Tribunal was whether or not the proposal of the company to shift its place of business was justified. In that context the Hon''ble Division Bench held that the place where the company/management would carry on business was a prerogative of the company and no industrial dispute can be raised regarding the same and in that context made the observation that Mr. De has relied on. In my respectful reading of the said decision, the said observation is not the ratio decidendi so as to be a binding precedent. In any event, I have expressed my view above that suspension is a matter covered by Item No. 8 under the Third Schedule, and if not, then by Item No. 6 of the Second Schedule to the ID Act. Hence, the aforesaid observation of the Hon''ble Division Bench would not be relevant for the present purpose.

34. I also find substantial merit in the submission of Mr. Majumdar, learned Counsel for the respondents, that if the contention of the petitioner is to be accepted, then issues like unfair labour practice or mala fide transfer of workmen or victimization or employing workman as Badlis/Casuals for indefinite periods of time without regularizing their service, would also not constitute industrial disputes referable to the Tribunal. Such a position cannot be countenanced and I am unable to subscribe to such a view that would result in such a position.

35. I am, therefore, of the considered opinion that it cannot be said that an order of suspension, albeit in contemplation of a disciplinary proceeding, cannot be the subject matter of a reference before an Industrial Tribunal under any circumstances. That would be too wide a proposition of law. Hence it cannot be

said that the Industrial Tribunal lacks inherent jurisdiction to entertain a reference by the appropriate Government concerning suspension of workmen by the employer in contemplation of disciplinary proceeding. The only ground on which the reference in question has been challenged is that the suspension order in question does not give rise to an industrial dispute and hence, the Tribunal lacks inherent jurisdiction to entertain and determine the reference. Because of the view that I have taken, this challenge must fail. This view of mine finds support from a decision of the Delhi High Court in the case of E.I.H, Ltd.-vs.-National capital Territory of Delhi, (2004) 4 LLN 1001. In the said decision the learned Judge referred to a Division Bench decision of the Delhi High Court in the case of Delhi Transport Corporation-vs.-D. D. Gupta, (1984) DLT 362, wherein the Delhi High Court observed, inter alia, as follows:- "Coming now to the question as to whether the validity of suspension /termination could or could not be enquired into be the Labour Court in computation proceedings whether under Section 33 C(2) of the Industrial Disputes Act or under Section 15 of the Payment of Wages Act, in our view, it will all depend upon the circumstances of a case. No doubt, this question can be gone into specifically in a reference under Section 10 of the Industrial Disputes Act, all the same if the suspension/termination is void ab initio, then the claim of the workman for computation on the assumption that he continues to be in service all through, there being no valid order of suspension/termination, can be preferred and the enquiry into the validity of the suspension/termination would become incidental to the main question of computation. We are in respectful agreement with our brother S. Ranganathan, J. in the view that he has taken on this point. We need not dilate further."

36. In view of the aforesaid, this writ application fails and is dismissed. There will, however, be no order as to costs.

37. Since the reference has been pending from 2005, it is desirable that the same is concluded and finally disposed of as expeditiously as possible. Hence, I request the Learned Tribunal to dispose of the reference at an early date and in any event within six months from the date of this order being placed before the Learned Tribunal.

38. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.