
(1986) 12 MAD CK 0016
In the Madras High Court
Case No : Writ Petition No. 831/81

N. Balakrishnan

APPELLANT

Vs

The Government of Tamilnadu

RESPONDENT

Date of Decision : 10-12-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 11, 11A, 12(4)

Citation : (1987) 2 LLJ 43

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

1. This is a petition for the issue of a certiorarified mandamus calling for the records of the Government of Tamil Nadu in G.O.Ms. No. 1270,

Labour and Employment Department dated 21st October, 1978, quash the same and direct its reconsideration. By that Government Order, the

1st respondent refused to refer an industrial dispute relating to the non-employment of the petitioner.

2. The petitioner was employed in the 2nd respondent Co-operative Stores as Assistant Cashier for about 13 years. He was placed under

suspension pending an enquiry by order dated 26th March, 1976. Certain charges were framed against him on 10th May, 1976 and ultimately, on

the ground that the charges have been proved, by an order dated 6th December, 1976, he was dismissed from service with retrospective effect

from the date of suspension viz., 27th March, 1976. He raised an industrial dispute u/s 2-A of the Industrial Disputes Act (hereinafter called the

Act) and the matter was taken up for conciliation. On the Conciliation Officer sending a failure report and on a consideration of the same, the 1st

respondent by order dated 21st October, 1978 declined to refer the dispute for

adjudication. The impugned order of the 1st respondent reads as follows :

The Government have examined the conciliation report of the Labour Officer II, Madurai first read above in regard to an Industrial Dispute raised by Thiru. N. Balakrishnan against the Management of Dindigul Co-operative Whole Sale Stores Ltd., Dindigul, Madurai District over the issue of his non-employment and they pass the following orders :

2. It is clear that the management had given a fair chance to the worker to defend his case during the enquiry but the worker had failed to avail the opportunity and to prove his case.

3. Hence the Government consider that there is no case to refer the issue in dispute for adjudication.

3. Learned counsel for the petitioner contended that the reasons given by the Government amounts to an adjudication of the dispute and arrogation

of the jurisdiction vested in the Labour Court to itself, which is not permissible, and therefore, the impugned order is illegal. Before referring to the

decisions relied on by the learned counsel for the petitioner, it would be convenient to set out certain provisions in the Act. Section 12(5) of the

Act reads as follows :

If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a

Board, Labour Court, Tribunal or National Tribunal, it may make such a reference. Where the appropriate Government does not make such a

reference, it shall record and communicate to the parties concerned its reasons therefor.

Section 12(4) of the Act relates to the conciliation failure report. Though section 12(5) of the Act refers to the satisfaction of the Government that

there is a case for reference, the actual reference is made only u/s 10 of the Act which states that where the appropriate Government is of opinion

that an industrial dispute exists or is apprehended, it may, at any time, by order in writing, refer the dispute to the appropriate Tribunal. The primary

question to be considered is, therefore, as to whether there is an industrial dispute within the meaning of Section 2(k) of the Act or an industrial

dispute is apprehended.

4. Referring to the scope of this power of the Government to refer prior to the insertion of Section 2-A and Section 11-A of the Act, u/s 10 read

with Section 12(5) of the Act, the Supreme Court in the decision reported in Bombay Union of Journalists and Others Vs. The State of Bombay

and Another, :

It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said

questions of law, because that would normally lie within the jurisdiction of the industrial tribunal. Similarly, on disputed questions of fact, the

appropriate Government cannot purport to reach final conclusions, for that again would be the province of the industrial tribunal. But it would not

be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it

decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5) or not. If the claim made

is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the

general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into

account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be

said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10(1), and so, the argument

that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of termination of service of appellants 2

and 3, cannot be accepted.

This was the view expressed in other decisions also in regard to the position existed prior to the insertion of Sections 2-A and 11-A of the Act.

5. By Act 35 of 1965, with effect from 1st December, 1965, Section 2-A of the Act was introduced and that reads as follows :-

Dismissal, etc. of an individual workman to be deemed to be an industrial dispute :- Where any employer discharges, dismisses, retrenches or

otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or

arising out of, such discharge, dismissal, retrenchment or termination shall be

deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.

By Act 45 of 1971, with effect from 15th December, 1971, Section 11-A of the Act was introduced and that reads as follows :-

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen :- Where an

industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for

adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied

that the order of discharge or dismissal was not justified it may, by its award, set aside the order of discharge or dismissal and direct reinstatement

of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser

punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the

materials on record and shall not take any fresh evidence in relation to the matter.

6. In the light of these provisions, the submission of the learned counsel for the petitioner is that the ratio of the decision in *Bombay Union of*

Journalists Vs. State of Bombay (Supra) in so far it held that both questions of law and fact, are within the province of the Industrial Tribunal to

decide and the Government have no right to decide those questions and decline a reference will apply, with greater force as Sections 2-A and 11A

of the Act had further restricted the powers of the Government in declining a reference in cases falling u/s 2-A of the Act.

7. As already stated, normally, the primary question that has decided is as to whether there is an industrial dispute or not. The decisions on this

question may be with reference to the facts or with reference to the law. On those disputed questions of fact and law, the primary jurisdiction to

decide is vested in the Tribunal and the Government's Power to consider the same while referring or declining to refer the question is as stated in

the passage extracted from the decision of the Supreme Court in *Bombay Union*

of Journalists Vs. State of Bombay (Supra). But, Section 2-A of the Act takes away most of the discretions of the Government in making a reference in respect of dismissal, discharge, or termination of a workman. In view of the provisions u/s 2-A read with Section 11-A of the Act, normally, a case of dismissal, discharge or termination of service of a workman falling u/s 2-A of the Act shall have to be referred for adjudication and the discretion vested in the Government in regard to the same is very little and not that much as those cases falling under other categories of disputes. In Workmen of Syndicate Bank, Madras Vs. Government of India and Another, , the Government have declined to make a reference on the ground that the charges of misconduct against the worker were proved during a duly constituted departmental enquiry and penalty was imposed on the worker after following the required procedure. In that case, the Supreme Court has held at page 94 as follows :

It would not be right for the Government of India to refuse to make the reference on the ground that the charges of misconduct against the worker proved during a duly constituted departmental enquiry and penalty was imposed on the worker after following the required procedure. If such a ground were permissible it would be the easiest thing for the management to avoid a reference to adjudication and to deprive the worker of the opportunity of having the dispute referred for adjudication even if the order holding the charges of misconduct proved was unreasonable or perverse or was actuated by mala fides or even if the penalty imposed on the worker was totally disproportionate to the offence said to have been proved. The management has simply to show that it has held a proper inquiry after complying with requisite procedure and that would be enough to defeat the worker's claim for adjudication. Such a situation cannot be countenanced by law.

8. The Supreme Court has again considered this question in detail in the decision reported in Ram Avtar Sharma and Others Vs. State of Haryana and Another, . In that case also the Government declined to refer the dispute stating that the Government does not consider the case to be fit for reference for adjudication by the Tribunal as it has been learnt that the services of the workman were terminated only after charges against him were proved in a domestic enquiry. Holding that the rejection was improper and

illegal, the Supreme Court at pp. 191-192, observed :

The assumption underlying the reasons assigned by the Government are that the enquiry was consistent with the rules and the standing orders, that

it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The last

aspect has assumed considerable importance after the introduction of Section 11-A in the Industrial Disputes Act by Industrial Disputes

(Amendment) Act, 1971, with effect from 15th December, 1971. It confers power on the Tribunal not only to examine the order of discharge or

dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words,

Section 11-A confers powers on the Tribunal/Labour Court to examine the case of the workman whose service has been terminated either by

discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The

workman questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A

bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of

making a reference u/s 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2-A of the Act

denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of

enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved.

It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was

commensurate with the gravity of the misconduct charged. All those relevant and vital aspects have to be examined by the Industrial Tribunal while

adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is

impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or

the reasons for which the Government declined to make a reference u/s 10 are irrelevant, extraneous or not germane to the determination, it is well

settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus.

9. Though the decision of a single judge of the Karnataka High Court reported in Srikanth Rao Vs. State of Karnataka and Others, simply

followed the decision of the Supreme Court reported in Workmen of Syndicate Bank, Madras Vs. Government of India (Supra), it is useful to cite

that judgment because the order declining to refer in that case is similar to the order now in question. There also the impugned order stated that the

Government considered that the demand/dispute in question has no prima facie case for reference for adjudication, for the reason that the action of

the management in dismissing the service of the workman is legal, proper and justified and that sufficient opportunity has been given and the

principle of natural justice has been followed. Following the decision of the Supreme Court, the order was set aside in that case also.

10. Learned counsel for the management relied on a Division Bench decision of this Court, to which I was a party, reported in V. Veeraranjan Vs.

The Government of Tamil Nadu 1985 II M.L.J. 223. That decision also has dealt with the scope of Sections 2-A and 11-A of the Act. It does not

in any way help the learned counsel for the management because ultimately the decision depended on the particular facts of the case.

11. As I have stated earlier, even in a case falling u/s 2-A of the Act, the Government have a power to refuse to make a reference but the power is

more restricted than in the case of an industrial dispute not falling under that section. The normal rule shall be to refer in all cases of dismissal,

discharge or termination of service of workman falling under Sections 2-A and 11-A of the Act. But in appropriate cases of an exceptional nature,

the Government may decline to make a reference. What are those exceptional cases or circumstances cannot be defined precisely and it will have

to depend on the circumstances in each case. The claim made by the worker is patently frivolous or is highly belated or that the impact of the claim

on the general relation between the employer and the employee in the region is likely to be adverse, or the declining or referring the dispute will put

an end to the labour unrest or promote or establish an industrial peace, may be some of the reasons that may be taken into account while referring

or refusing to refer. The reasons generally shall relate to the larger interest of labour or the establishment of an industrial peace in the region and not

on mere merits of the case either on law or facts.

12. In this particular case, no such exceptional circumstances are referred to in the order declining the reference except to state that the

management has given a fair chance to the worker to defend his case during the enquiry but the worker has failed to avail the opportunity and

prove his case. In fact, the Government order does not even refer whether the punishment given was disproportionate to the charges found proved

and that itself would be enough to interfere with the impugned order. In the circumstances, I am of the view that the impugned order of the

Government is not in accordance with law and accordingly I allow the writ petition and set aside the impugned order. The matter is remanded to

the 1st respondent for fresh disposal on merits in accordance with law. However, there will be no order as to costs.

13. The 1st respondent is directed to give its decision again whether the dispute should be referred to or not within two months from this date.