
(1987) 03 KAR CK 0001
In the Karnataka High Court
Case No : W.P. No. 21460 of 1986

Nageswara B.S. and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-03-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1987) 1 KarLJ 384

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This matter is disposed of at the stage of preliminary hearing after notice to respondents and after hearing the Counsel for parties.

2. The petitioners were former employees of 2nd respondent-Management of M/s. New Government Electric Factory Ltd. (hereinafter referred to as the Company). The petitioners have alleged that they joined the service of the said Company between 1963 and 1979 and worked for different periods. They were at the relevant time working in the Fire Service and Security Department of the Company. The petitioners have alleged that they had been issued with charge sheets on 7-2-1985 alleging that they were directed to verify some cases of tubectomy operations by visiting Jalajakshi Nursing Home, Malleswaram, Bangalore, and to report whether the wives of the employees of the Company named therein had undergone tubectomy operations in that Nursing Home and that they gave reports to the effect that the wives of the employees of the Company had undergone tubectomy operations and on the basis of the said reports certain amounts were paid to the employees and later it was discovered that Jalajakshi Nursing Home was only a clinic and there were neither facilities for conducting operations, nor ward facilities. The gravamen of the charge was that they had given a false report enabling unjust enrichment by other workmen. A domestic enquiry followed and thereafter they were dismissed from service. They raised an industrial dispute. The matter was referred for conciliation proceedings which did not materialise. In the result, they sought reference for adjudication before the Labour Court or the Tribunal as the case may be. Instead

the Government by Annexure-D dated 22-11-1986 has informed them that their case does not deserve to be referred for adjudication as they have themselves tendered resignations to their jobs and obtained termination monetary benefits. Aggrieved by the same, this Court is moved under Art. 226 of the Constitution to have that order at Annexure-D quashed as being in excess of the jurisdiction vested in the Government under Sec. 10 (1) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act).

3. Mr. K.C. Ariga for Shri S.G. Sundarswamy, learned Counsel for the 2nd respondent, resisted the prayer on the sole ground that it was in fact recorded by the Conciliation Officer that the petitioners had tendered their resignations and therefore the Government was justified in rejecting the reference prayed for.

4. It is too late in the day to accept that argument. This question has fallen for consideration before the Supreme Court in a number of cases and it will be useful to refer to the latest of the decisions in the case of V. Veerarajan and others v. The Government of Tamil Nadu and others (1987(1) L.L.J. 209). The facts of the said case is summarised as follows: The appellants before the Supreme Court were the workmen. Their efforts to seek a reference under the Act did not meet with success. The Government refused to make a reference on the ground that on merits they had no case. The learned single Judge of the Madras High Court as well as the Division Bench of that Court sustained the order of the Government. The matter came to be heard by the Supreme Court on 9th July, 1985. The Supreme Court did record that the manner in which the Government had proceeded to dispose of the case, the reference of the workmen was totally uncalled for as it was adjudicating the case itself instead of leaving it to the Tribunal or the Court to do so. By a detailed discussion after referring to the earlier decided cases of the Supreme Court, they were about to give a direction to the Government of Tamil Nadu to make a reference. At that point, the Counsel appearing for the Government of Tamil Nadu submitted that there may be other matters which the Government may take into consideration and therefore instead of a direction for reference, the Court should remand the matter to the Government for fresh consideration. That was acceded to by the Court. Thereafter, the Government proceeded to reject the reference once again in the following terms:

"Accordingly the Government have re-examined the conciliation report first read above and all other connected relevant records and consider that it is not necessary to refer the cases of Thiruvallargal K. Arinathan, A.C. Kabaleswaran, V. Srinivasan, V. Veerarajan, P. Subramanian and H. Indirarajan for adjudication both on merits and on expediency for the following reasons..... It that circumstance, the Supreme Court has held after following the earlier decided cases that the Government has no such power to dispose of the matter under Sec. 10(1) of the Act in that manner. They have observed as follows:

"The criticism advanced by Mr. Ramamurthi in regard to the reasons given by the

State Government seem to be well founded and we are of the opinion that the respondent-State Government should have a direction to refer the dispute for adjudication by the Labour Court. The State Government's order should be made within one month from today and the Labour Court to which the dispute may be referred shall have a direction to dispose of the reference within four months hence from the date of receipt of the reference."

Before reaching the conclusion, the earlier cases have been referred to and the rare exceptions noticed, in which the Government may decline to make the reference.

5. The principle emerging from the aforementioned decision is that the duty of the Government under Sec. 10(1) of the Act is to refer or not to refer but itself not adjudicate the merits of the case.

6. In that view of the matter, the endorsement issued at Annexure-D to the petition is set aside as being in excess of the jurisdiction vested in the Government. The Government, if it is satisfied that a dispute exists in regard to the termination of service of the petitioners from the employment of the 2nd respondent-Company, any if the dispute exists, it has no choice but to refer the same for adjudication to the appropriate Tribunal or the Labour Court as the case may be.

7. Accordingly, rule will issue and be made absolute.

8. It is submitted by the learned Counsel for the petitioners that the petitioners are without job for over two years and therefore the Government must dispose of their case for reference within one month from the date of receipt of this order and if it is referred to the appropriate Tribunal or the Labour Court, the same shall be disposed of within the time limit specified by the Government.

9. Order accordingly.

Writ Petition is Allowed.