

(1990) 11 GUJ CK 0023
In the Gujarat High Court

Case No : Special Civil Application No. 50 of 1990

N.D.D.B. Employees Union

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 42, 43, 43A

Industrial Disputes Act, 1947 — Section 10, 10(1), 12(4), 12(5), 2

Citation : (1991) 1 GLR 410

Hon'ble Judges : V.H. Bhairavia, J;M.B. Shah, J

Bench : Division Bench

Judgement

Shah, J.—National Dairy Development Board Employees" Union has filed this petition against the order dated December 18, 1989 (Annexure "D") passed by the Deputy Labour Commissioner, Baroda, refusing to refer the matter to the Industrial Tribunal on the ground that the workmen, who have raised the dispute, were workmen, who have raised the dispute, were workmen of the Contractors and not that of National Dairy Development Board, Anand The petitioner has prayed that respondents Nos. 1 and 2 be directed to refer the aforesaid dispute to the Industrial Tribunal for decision u/s 10 of the Industrial Dispute Act for the demands made in the letter dated January 3, 1989, which is produced at Annexure "A". The petitioner-Union demanded permanent grades and consequent revision of pay scales, as per the said demands.

2. In this petition, it has been submitted that the State Government or the Labour Commissioner was required to refer the matter to the Industrial Tribunal, because the question whether the concerned workmen were the workmen of respondent No. 2 or its Contractors cannot be decided by the State Government, and that whether there exists master and servant relationship between the concerned workmen and respondent No. 3 depends on various disputed facts and respondent No. 2 has no jurisdiction to adjudicate it.

3. This contention is vehemently opposed by respondent No. 3 In the affidavit-in-

reply filed by the Deputy Manager (Legal), N.D.D.B., it has been, inter alia, stated that the concerned workmen 1 to 39, stated in Annexure "A" to the petition, were the persons engaged by three different Contractors. Persons named at Serial Nos. 1 to 14 were engaged by Contractor T. H. Menon, who had taken the mess contract. As per the direction given in Special Civil Application No. 4285 of 1989, 8 persons out of the said 14 persons are engaged by the present Contractor at Farmer's Hostel Mess. Persons mentioned at Serial Nos. 15 to 34 in Annexure "A" are person engaged by BOHO Club, through the Contractor, viz., Gujarat Environmental Service Society, for the work of maintenance and clearing of the lawns and sanitation work of the BOHO Club and surroundings areas of quarters. Persons mentioned at Servile Nos. 35 to 39 are engaged as daily wagers for the cafeteria activities of the BOHO Club. Details are given in the affidavit in-reply to show that the workmen mentioned in Annexure "A" are not the workmen of respondent No. 3 N.D.D.B. It has been, therefore, submitted that the Deputy Commissioner of Labour has rightly refused to refer the dispute to the Industrial Tribunal no the basis of the materials and the affidavits produced by the respondents No. 3. It has been pointed out that the Contractors are the Registered Contractors and are having licences under the Contract Labour (Regulation and Abolition) Act, 1970.

4. In support of the contention raised by the petitioner, learned Advocate Mr. Mukul Sinha heavily relief upon the judgment of the Supreme Court in the case of Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, . As against this, Mr. B. R. Shah, learned Advocate appearing on behalf of the respondent No. 3, vehemently submitted that if the persons mentioned in Annexure "A" are not the workmen of respondent No. 3, there is no question of referring to the Industrial Tribunal the dispute between the petitioner and respondent No. 3. He submitted that u/s 10(1) of the Industrial Disputes Act, frivolous disputes are not required to be referred to the Industrial Tribunal and the State Government, while exercising its administrative function u/s 10(1) of the Industrial Disputes Act, can consider prima facie case of the matter without adjudicating it finally. For this purpose, he has placed reliance upon the decisions of the Supreme Court in the case of Bombay Union of Journalists and Others Vs. The State of Bombay and Another, , in the case of Prem Kakar Vs. State of Haryana and Another, and in the case of Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and others, .

5. It is true that in the case of Telco Convoy Drivers Mazdoor Sangh & Anr. (supra), the Supreme Court has held that the formation of opinions to whether an Industrial Disputes "exists or is apprehended" is not the same things as to adjudicate the dispute itself on its merits. The function of the appropriate Government u/s 10(1) of the Act is an administrative function and no a judicial or quasi-judicial function. In performing the administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of the lies, which would certainly be in excess of the power conferred on it by Section 10 of the Act.

6. For this purpose, the Court has relied upon its previous decision in the case of Ram Avtar Sharma and Others Vs. State of Haryana and Another, and M.P., Irrigation Karamachari Sangh v. Ram Avtar Sharma v. State of Haryana, (supra), the Supreme Court has specifically observed that for arriving at a satisfaction whether an industrial dispute exists or is apprehended, the appropriate Government may determine prima facie whether any 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. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power, it is liable to be questioned in exercise of the power of judicial review and the Court can direct the appropriate Government to reconsider the matter. This would be clear from paragraph 6 of the decision, which reads as under Ram Avtar Sharma and Others Vs. State of Haryana and Another, :

"6. 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 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 existed 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 grounds irrelevant, extraneous or 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 Vs. K.P. Krishnan and Others, 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, which, 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 mandamus even in respect of an administrative order. May be, the Court may not issue writ of mandamus, directing the Government to make reference but the Court can after examining the reasons given by the appropriate Government of 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."

The Court thereafter arrived at the conclusion that the reasons given by the State Government in refusing to make a reference for adjudication were extraneous and irrelevant and, therefore, directed the appropriate Government to reconsider its decision power u/s 10 on considerations relevant and germane to the decision.

7. In the case of The M.P. Irrigation Karmchhari Sangh v. State of M. P. & Anr., (supra), the Court referred to the decision in the case of Bombay Union of

Journalists & Ors. v. State of Bombay & Anr. (supra), and held that the appropriate Government is entitled to examine patent frivolousness of the demands. The State Government can prima facie examine the merits of the question involved. The Court has further observed that 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 valid disputes. Similarly, in the case of Bombay Union of Journalists & Ors. v. State of Bombay & Anr. (supra), the Supreme Court has held that in 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 a reference would be expedient or not; on disputed question of fact, the appropriate Government cannot purport to reach final conclusions, 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. This would be clear from paragraph 6, which reads as under (1964 I LLJ 35) :

"6. This argument must be rejected, because when the appropriate Government considers the question as to whether a reference should be made u/s 12(5), it has to act u/s 10(1) of the Act, and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report had been submitted u/s 12(4) the appropriate Government ultimately exercises its power u/s 10(1), subjects to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made u/s 12(4). This question has been considered by this Court in the case of the State of Bombay Vs. K.P. Krishnan and Others, . The decision in that case clearly shows that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. 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 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 the jurisdiction in expressing its prima facie view on the nature of the termination of services of appellants 2 and 3, cannot be accepted."

In view of the aforesaid binding decisions of the Supreme Court, it is clear that while exercising the power under Sec, 10(1) of the Industrial Disputes Act, the appropriate Government is entitled to prima facie consider the merits of the dispute, whether it is patently frivolous or is clearly belated and its impact on the general relations between the employer and the employees in the region. But it is not empowered to reach a final decision on the question of law or facts as it would be within the province of the Industrial Tribunal. If dispatched, questions of law, or fact are required to be decided, then it would be within the province of the Industrial Tribunal.

8. Mr. B. R. Shah, learned Advocate appearing on behalf of the 3rd respondent, has also relied upon the decision of the Supreme Court in the case of Nirmal Singh Vs. State of Punjab and Others, , In that case, Clerk/Branch Manager in the Hoshiarpur Central Co-operative Bank Ltd., raised demand in regard to his dismissal. The Labour Commissioner of Punjab declined to refer the dispute for adjudication on the ground that he was not a "workman". Writ petition filed by him was summarily dismissed. The Supreme Court held that the Labour Commissioner ought to have given reasons why he came to the conclusion that the appellant therein was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, because the Labour Commissioner has only stated that the post held by the appellant therein did not fall within the category of "workman". Mr. B. R. Shah, learned Advocate for the respondent No. 3, therefore, submitted that while making reference, the State Government is entitled to prima facie decide whether the dispute relates between the workmen and the respondent No. 3 or whether they are workmen of the respondent No. 3 or not.

9. He also relied upon the decision of the Supreme Court in the case of Prem Kakar v. State of Haryana & Anr. (supra). In that case, the Government refused to make reference u/s 10, by stating as follows :

"The Government have not found your case fit for adjudication to a Labour Court because your were working as an Electrical Foreman in this concern, which was a supervisory job and your wages were more that Rs. 500/- per month. Therefore, your case is not covered by the definition of the term "workman" given in the Industrial Disputes Act."

Against that order, writ petition was filed, which was summarily dismissed. Before the Supreme Court, it was contended that the question whether the appellant was a workman was a disputed question of fact and law, which could be decided only by appropriate Labour Court and, therefore, reference should have been made. The Court held that if it appears to the Court that the reasons given show that the appropriate Government took into account any consideration irrelevant or foreign, then the Court may, in a given case, consider the case on a writ of mandamus. The Court further held that as the Government found that the appellant was not a workman within the definition of workman in the Act, it was not a fit case for reference for adjudication. Learned Advocate Mr. Shah also relied upon the judgment of the Supreme Court in the case of *Miss. A. Sundarambal v. Government of Goa, Daman & Diu & Ors.*, (supra), and submitted that it is an accepted position of law that before making reference, the appropriate Government is entitled to consider whether the person raising the dispute is a workman within the meaning of Section 2(s) of the Industrial Disputes Act or not. In that case, the Government considered the question whether the dispute raised by the petitioner, who was a school teacher, should be referred for adjudication u/s 10 of the Act or not. On reaching the conclusion that the school teacher was not a "workman" within the definition of Section 2(s) of the Act, which alone would have converted a dispute into an industrial dispute as defined in Section 2(k) of the Act, it declined to make reference. Against that orders writ petition filed before the High Court was dismissed. The Supreme Court, in that case, considered definition of "workman" as provided u/s 2(s) and held that in order to be a workman, a person should be one who satisfies the following conditions :

- (i) he should be a person employed in an industry for hire or reward;
- (ii) he should engaged in skilled or unskilled manual, supervisory, technical or clerical work; and
- (iii) he should not be person falling under any of the four clauses, i.e. (i) to (iv) mentioned in the definition of "workman" in Section 2(s) of the Act.

The Court, therefore, approved the view taken by the High Court that cannot be treated as "workman" as defined under the Act.

10. Further, form the definition of the words "industrial dispute" as mentioned in Section 2(k) of the Industrial Disputes Act, there must be dispute or difference between the employers and employers, between employers and workmen or between workmen and workmen. Therefore, before referring the dispute, the adjudicating authority, the State Government, must be satisfied that it is a dispute between employers and workmen. Learned Advocate Mr. Shah also, therefore, submitted that for making reference to the Industrial Tribunal, it must be established that there is a relationship of employer and employee between the workmen and respondent No. 3. For becoming a "workman", he must satisfy the conditions laid down in Section 2(s) of the Industrial Disputes Act. For this

purpose, he relied upon the provisions of Section 2(s) of the Industrial Disputes Act and the decision of the Supreme Court in the case of Workmen of The Food Corporation of India Vs. Food Corporation of India,). He submitted that, in that case, the Supreme Court has specifically held that unless a person is employed, there can be question of his being a "workman" within the definition of the term as contained in the Act and where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, on the definition as it stands, the workman of the Contractor would not without something more become the workman of that third persons. For this purpose, he relied upon paragraph 12 of the aforesaid decision, which is as under (p.9) :

" xxx xxx xxx

The expression "employed" has atleast two known connotation but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer there can be no question of his being a "workman" within the definition as contained in the Act. Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, . Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the contract system was in vogue, the workmen employed by the contractor were certainly not the workmen of the Corporation and no claim to that effect has been made by the Union."

On the basis of the aforesaid judgment and the ratio laid down by the Supreme Court, he submitted that the State Government is within its jurisdiction to decide prima facie whether the workmen mentioned in Annexure "A" to the petition are employed by the respondent No. 3 or not. For that purpose, the State Government is entitled to refer to prima facie evidence and it is patently clear that the workmen mentioned in Annexure "A" are not the workmen of the respondent No. 3 there is no question of making reference between the petitioner and respondent No. 3.

11. He further submitted that adequacy or sufficiency of the material, while refusing to make reference, is not justifiable and it is for the Government to decide whether there is sufficient material for refusal of the reference. For this purpose, he relied upon paragraph 6 of the decision of the Supreme Court in the case of Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, , which is as under :

"6. Section 10(1) of the Act confers powers on the appropriate Government to refer at any times any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus, the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters See. *State of Madras v. C. P. Sarathy* (1953 I LLJ 74)."

From the aforesaid decision, it can be said that the power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference an administrative act. The adequacy or sufficiency of the material on which the opinion not to refer the dispute is formed is beyond the pale of judicial scrutiny. If the matter does not pertain to industrial dispute, there is no question of making reference.

12. 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 persons 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 reference by assigning reasons for doing so as provided u/s 12(5) of the Industrial Disputes Act.

13. Mr. Sinha, learned Advocate appearing on behalf of the petitioner, vehemently submitted that even though on paper some persons might have been appointed by the Contractor, yet it does not reflect the real position or relationship between the persons raising the dispute and respondent No. 3. So - called contract between respondent No. 3 and its contract between respondent No. 3 and its contractors is sham and bogus and this question cannot be decided by the State Government as it involves disputed questions of fact, which requires adjudication. For this purpose, he placed reliance upon the decision of the Supreme Court in the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and submitted that the work done by the workman was an integral part of respondent No. 3 raw material was supplied by the respondent No. 3, that the factory premises belonged to respondent No. 3, that the equipment used also belonged to respondent No. 3 and the finished product was taken by the respondent No. 3 for its own trade. The workmen were broadly under the control of the respondent No. 3 and the defect in their work was required to be rectified as per the dictate of respondent No. 3. He, therefore, submitted that for lifting of veil and to find out the correct facts, the dispute was required to be referred to the Industrial Tribunal, as it is not within the jurisdiction of the State Government to decide it. He relied upon paragraph 5 of the aforesaid judgment, which reads as under (p. 398) :

"5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labors to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off the workers is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management not the immediate contractor. Myriad devices, half-hidden in fold of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer based on welfare obligations on the real employer, based, on Articles 38 39 42 43 and 43A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the may of legal appearances."

He, therefore, submitted that considering the nature of the dispute between the parties, the dispute ought to have been referred to the Industrial Tribunal as it was not within the purview of the State Government.

14. As against this, learned Advocate Mr. B. R. Shah submitted that the petitioner-Union has previously filed an application for abolition of the contract

labour prevailing in certain departments of the respondent No. 3. That application was only partly allowed and contract labour was abolished from Sanitary Department. With regard to the rest of the Departments, contract labour was permitted. It is also pointed out that respondent No. 3 is getting the work done through register licence contractors strictly in accordance with the provisions of the Contract Labour (Regulation and Abolition) Act 1970. Learned Advocate Mr. Shah has, therefore, submitted that there is no question of unfolding the veil as sought to be contended by the petitioner to find out the real nature of relationship between the persons mentioned in Annexure "A" and respondent No. 3. Mr. Shah has relied upon an unreported judgment of Division Bench of this Court in Special Civil Application No. 5950 of 1983, decided on February 14, 1984. The relevant portion of the aforesaid judgment reads as under :

"xxx In petition where we are called upon to consider whether certain workmen are really workmen of the first respondent despite the fact that they are employed by a contractor, unless we have material on which we can come to that conclusion, no relief would be available to the petitioner. The matters mentioned in the petition and reiterated forcibly by the petitioner's counsel do not at all enable the Court to come to the conclusion that they are workmen of the first respondent. Even when workers are engaged by a contractor to do the work of a factory or of a management, such workers will be doing the work of production or the maintenance in which the factory is engaged. They would be subject to rules of entry and exit, they would be subject to rules of entry and exit, they would be subject to supervision as to the quality of work and they would be subject to direction by the supervisors of the management as to how the work is to be done. None, of these would establish a direct relationship. The case that the contractor is a make-believe requires much more material than what is averred in the petition. To add to all this, there is the fact that the petitioner's Union is a party to a settlement reached as late as October 22, 1983 referred to in the affidavits before the Court, which recognizes existence of the contractor, employment by the contractor of labour and attempt at accommodation of such workers by the first respondent. It is too much, therefore, for the petitioner to contend that, despite all this, merely, because of the advertisements to which we have referred, the Court should accept their case that they are employees of the first respondent and not of any contractor. xxx"

15. In our view, these questions are not required to be dealt with at this stage because the Deputy Labour Commissioner has not assigned any specific reasons for arriving at the conclusion as provided u/s 12(5) of the Industrial Disputes Act that the persons are not the workmen of the respondent No. 3. Therefore, in any set of circumstances, considering the controversy between the parties, in our view, this would not be a fit case for this Court to straight way refer the matter to the Industrial Tribunal as it is sought to be contended by the petitioner. Hence the order passed by the Deputy Labour Commissioner, Annexure "D" is required to be quashed and set aside. The State Government is required to pass

appropriate order in conformity with the provisions of Section 12(5) and Section 10(1) of the Industrial Disputes Act. While deciding the question, the jurisdiction of the State Government, as stated above, would be only limited to find out prima facie from the evidence on the record whether the persons mentioned in Annexure "A" are workmen as defined u/s 2(s) of the Industrial Disputes Act. It would also be open to decide prima facie whether the relationship of employer and employees exists between the respondent No, 3 and the employees without finally adjudicating the dispute either on facts or law. It may consider prima facie the merits of the dispute and take into account other relevant considerations, which would help it to decide whether making a reference would be expedient or not.

16. In the result, this petition is allowed. Rule is made absolute to the aforesaid extent with the costs. The appropriate Authority/Labour Commissioner is directed to pass appropriate order within two months from the date of receipt of the writ of this Court., The appropriate Authority/Labour Commissioner is directed, if necessary, to give an opportunity of hearing to the parties and also to give an opportunity to the parties to produce necessary documentary evidence on his record.