
(1997) 07 MP CK 0037
In the Madhya Pradesh High Court
Case No : M.P. No. 828 of 1992

Prakash Chandra Sethi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1998) 1 LLJ 206

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : B.C. Jain, for the Appellant; B.G. Neema and S.S. Samvastar, for the Respondent

Final Decision : Allowed

Judgement

A.R. Tiwari, J.—The petitioner has filed this writ petition under Article 227 of the Constitution of India for the under-noted reliefs.

"The petitioner, therefore, prays that this Hon'ble Court be pleased to quash the order No. 12012/183/89/IR/B-III dated March 25, 1992 (Annexure P/25) passed by Respondent No. 1 by a writ of Mandamus and/or Certiorari or other appropriate writ or order and direct the Respondent No. 1, the Union of India to refer the dispute to the Appropriate Tribunal for adjudication on merits."

2. Briefly stated, the facts of the case are that the petitioner claims that being a workman, he is entitled to continue in service till attaining the age of 60 years. The employer, however, removed him from service before attaining the age of 60 years. This resulted in dispute. The petitioner desired the appropriate authority to make a reference to the appropriate Tribunal. The Respondents No. 2 and 3 have filed the return in opposition.

3. Earlier, the petitioner had filed M.P.No. 928/90 which was decided by the Division Bench of this Court on February 19, 1990 thereby quashing the earlier order (Annexure P/10) and directing the Respondent No. 1 to reconsider the

matter and pass a speaking order. In compliance with this direction, the Government of India, Ministry of Labour communicated the order dated March 25, 1992 (Annexure P/25) whereby the fortune did not fluctuate. This order is challenged as without jurisdiction.

4. I have heard Shri B.C. Jain, learned counsel for the petitioner, Shri B.G. Neema, learned counsel for Respondent 1 and Shir S.S. Samvat-sar, learned counsel for Respondents No. 2 and 3.

5. The Respondent No. 1 declined to make reference on the assumption that the petitioner was not a workman within the meaning of the Industrial Disputes Act, 1947.

6. The counsel for the petitioner submitted that the Respondent No. 1 lacked competence to adjudicate whether the petitioner was or was not a workman and thus committed an error in refusing to make a reference. The counsel has placed reliance on Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, . In this decision, it is held as under at p 561 :

"We are, therefore, of the view that the State Government, which is the appropriate government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of Telco or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference u/s 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference u/s 20(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another, ; M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, , Nirmal Singh Vs. State of Punjab and Others, . The direction to make reference was thus, made. "

7. The counsel also submitted that in similar cases, the Respondent No. 1 did make the reference. This submission is not disputed by the counsel for the Respondents. In fact, the counsel for Respondents No. 2 and 3 submitted that on merits, the petitioner has no case for the relief.

8. Be that as it may, I am called upon to consider only whether the order (Annexure P/25) is sustainable in law.

9. The counsel for the Respondents submitted that in case direction for reference is made, the Respondents may be granted liberty to urge before the appropriate Tribunal as to whether the petitioner is or is not a workman and to urge all other points before the Tribunal.

10. The aforesaid submission is not disputed by the Counsel for the petitioner. The respondents shall have the aforesaid liability.

11. In the circumstances, I allow this writ petition and quash the order (Annexure P/25) with direction to Respondent No. 1 to make a reference u/s 10(1) of the Industrial Disputes Act, 1947 of the dispute raised by the petitioner to an appropriate Industrial Tribunal within a period of two months from today.

12. The petition is, thus, allowed in terms indicated above, but without any orders as to costs. Security amount, if deposited shall be refunded to the petitioner after the verification.