

(1971) 04 OHC CK 0029

In the Orissa High Court

Pratap Chandra Mohanty

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-04-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 22, 2A

Citation : (1971) 2 LLJ 196

Hon'ble Judges : R.N. Misra, J;B.K. Patra, J

Bench : Division Bench

Judgement

R.N. Misra, J.—The petitioner was serving as an electrician under M/s. Bisra Lime Stone Company Limited at Biramitrapur in the district of Sundergarh. In the year 1966 he was proceeded against for misconduct and was dismissed by order dated 26-8-66 by the employers after due enquiry. The Gangpur Labour Union espoused the cause of petitioner and wanted to raise a dispute before the Assistant Labour Commissioner (Central), Jharsuguda, (opposite party No. 2). The opposite party No. 2 called upon the employers for furnishing their comments against the alleged wrongful dismissal and posted the matter to 5th November, 1966 for joint discussion. As there was no formal conciliation proceeding taken by the opposite party No. 2, the petitioner raised this dispute afresh through the Rourkela "Majdur Sabha which union was then in existence. The opposite party No. 2 communicated to the petitioner on 19-7-67 his decision declining to take any proceedings u/s 12(4) of the Industrial Disputes Act (hereinafter referred to as the Act). Thereupon the petitioner moved the opposite party No. 2 to entertain the dispute u/s 2A of the Act and the opposite party No. 2 posted the matter to 9-11-67 for a joint discussion. The management did not participate in the proceeding but raised objection to the maintainability of the proceeding. On 29-11-67 the opposite party No. 2 dropped the matter and informed the petitioner.

2. By this writ application under Article 226 of the Constitution, the petitioner has asked for the issue of a writ of certiorari quashing the order of the opposite party

No. 2 dated 29-11-67 and for a direction to him to initiate a regular proceeding for conciliation as contemplated under the Industrial Disputes Act.

3. The opposite party No. 2 has entered appearance but has not filed any counter-affidavit. The employer applied for intervention and by our order dated 8-4-71 we allowed the employer to be impleaded as opposite party No. 3.

4. It is contended on behalf of the petitioner that the Conciliation Officer, opposite party, No. 2 having already taken cognizance of the dispute and called upon the parties to have joint deliberations, should not have dropped the proceeding and he was, in case there was a failure, bound to make a report under Sub-section (4) of Section 12 of the Act to the appropriate Government. It is also contended that even if the two unions did not come to espouse the cause of the petitioner in view of the incorporation of Section 2A in the Act, by Central Act 35 of 1965, the petitioner as the dismissed workman was entitled to maintain the dispute. The reasoning given in the order dated 29-11-67 is also questioned on merit.

5. On the other hand, the learned Standing Counsel for the Transport Department contends that there was no formal conciliation proceeding undertaken by the opposite party No. 2. He refers to paragraph 12 of the writ application where it has been clearly stated:

That your petitioner states and submits that as no conciliation proceeding was held u/s 12 of the Industrial Disputes Act and a conclusion report was not sent as per the provisions of of Section 12(4) of the Act....

and contends that the petitioner has himself accepted the position. The learned Standing Counsel further contends that it is open to the Conciliation Officer to hold certain preliminary enquiries before actually getting into the formal conciliation proceedings. The statute does not mandatorily require the Conciliation Officer to hold conciliation proceedings in every case and, therefore, even if the Conciliation Officer refused to hold a proceeding u/s 12 of the Act in the case of the petitioner, he is not entitled to relief in this writ application.

6. Section 12(1) of the Industrial Disputes Act provides:--

Where any industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall hold conciliation proceedings in the prescribed manner.

The statute thus makes a clear distinction between disputes relating to public utility service and otherwise, and in the case of disputes relating to public utility service, conciliation is mandatory whereas in regard to other industrial disputes, discretion is vested in the Conciliation Officer to hold conciliation proceedings or not. The use of the words "may" in one case and "shall" in the other, is clearly indicative of such a position. We find support for this view in the case of East Asiatic and Allied Companies, Bombay Vs. Shelke (B.L.), .

7. It would thus follow that in the instant case which is not an industrial dispute relating to a public utility service, the Conciliation Officer had a discretion vested in him under the statute either to hold conciliation proceedings or not. The Conciliation Officer explored the possibility of a settlement by asking the parties for joint deliberations. These were preliminary to the actual conciliation proceeding. As has been held by the Madras High Court in the case of Workmen of V.M. Bus Service Vs. Labour Officer and Another, :

The statute confers a discretion on the Conciliation Officer to decide whether he should hold conciliation proceedings or not. However, Sub-section (4) of that section (Section 12) is relied upon on behalf of the petitioner-union to urge that the Conciliation Officer has got to send a report to the Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at and therefore there is an obligation cast on him to hold conciliation proceedings. This sub-section will apply only where the conciliation proceedings are held and no such settlement is arrived at. It cannot apply where the conciliation proceedings have not been held. To such a case, only Sub-section (1) of Section 12 applies. As that sub-section confers a discretion on the Conciliation Officer to decide whether he shall hold conciliation proceedings or not, there is no room for the issue of a writ of mandamus in this case.

We are of the view that the aforesaid dictum has full application to the facts of the present case and it answers both the points raised by the petitioner. Firstly, as no conciliation proceeding had ever commenced, there was no duty cast upon the Conciliation Officer to act in accordance with Sub-section (4) of Section 12. Secondly, the petitioner is not entitled to a direction from us requiring the Conciliation Officer to hold conciliation proceeding.

8. There is no merit in the writ petition and it is accordingly dismissed. There would, however, be no order as to costs.

B.K. Patra, J.

9. I agree.