

(2004) 12 AHC CK 0148
In the Allahabad High Court
Case No : C.M.W.P. No. 43580 of 2002

Radhey Shyam Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-12-2004

Acts Referred:

Constitution of India, 1950 — Article 136, 142, 226, 227

Industrial Disputes Act, 1947 — Section 11

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5), 2, 2A

Citation : (2005) 5 AWC 4010 : (2005) 1 ESC 188 : (2005) 2 UPLBEC 1181

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Rajesh Tiwari and Arvind Srivastava, for the Appellant; V.B. Singh, Vijay Sinha and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—This writ petition arises out of an order dated 19.8.2002 passed by Deputy Labour Commissioner, Agra Region, Agra refusing to make reference of the industrial dispute raised by the petitioner with regard to his termination of service.

2. The petitioner was appointed on 11.6.1971 as Draftsman. Thereafter, he was promoted to the post of Foreman. His services were allegedly terminated without compliance of provisions of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") w.e.f. 4.9.2001. It is also alleged that when he approached the employers for settlement of dispute, he received no response and as such, he moved an application u/s 2-A of the Act before the Conciliation Officer/Deputy Labour Commissioner, Agra Region, Agra on 20.9.2001.

3. The employers-Respondent No. 3-M/s. Hind Lamps Ltd. Shikohabad, District Firozabad contested the conciliation proceeding and filed written statement, inter alia, stating that the petitioner was absent w.e.f. 7.6.2000 to 24.2.2001 without any information or approval of leave by the management. It was also stated that

the nature of duties of the petitioner was supervisory and administrative and he was drawing salary of Rs. 6,290/- per month in addition to payment of medical claim, group insurance, L.T.C. etc. According to the employers, several letters were written to the petitioner at his permanent home address recorded with them, and also at the address of the quarter allotted to him at the factory premises requesting him to join his duties but all of them were received back unserved. Since he was absenting himself without information or prior permission, and was engaged in other business, the management treated him as voluntarily retired. Lastly, it was the case of the employers that as the petitioner is not a workman within the meaning of the Act, provisions of retrenchment are not applicable to him. In support of their case regarding nature of duties, power and status of the petitioner, including a comparative chart of duties of workman and Foreman establishing that the services of the petitioner were purely supervisory and administrative, in nature, and he was also exercising administrative functions such as granting leave etc. It was evident from the documents filed by the employers before the Deputy Labour Commissioner, which have also been filed as Annexures 2 to 5 to the counter-affidavit that the service conditions of Workman and Foreman were altogether different and being governed by different service rules. The workmen are governed by the Standing Orders and Foreman is governed by the separate Service Rules for Foreman and Accountant Cadre Employees. From perusal of these documents it is evident that there is marked difference in their nature of duties, powers, payable allowances and age of superannuation etc.

4. The documentary evidence etc., filed by the employers regarding powers, pay-scale, duties and terms of employment were not rebutted by petitioner by any evidence in support of his case that he was not exercising power of Foreman etc, but was discharging duties of a workman. The Deputy Labour Commissioner, after hearing the parties passed the impugned order dated 19.8.2002 holding that the dispute cannot be referred to the Labour Court for the reason that the petitioner does "not fall within the ambit of the definition of "workman" as contained in Section 2 (z) of the Act. The order dated 19.8.2002 is quoted below for ready reference :

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5. The definition of workman contained in Section 2 (z) of the Act is as under :

"(z) "Workman" means any person (including an apprentice) employed in any industry to any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

- (i) Who is subject to the Army Act, 1950 or the Navy (Discipline) Act, 1934 ; or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

6. The order of the Deputy Labour Commissioner refusing to refer the dispute has been assailed by the petitioner on the ground that a public duty is cast on the State Government to refer the dispute for adjudication in exercise of power u/s 4-K of the Act. Deputy Labour Commissioner has no authority of law to adjudicate as to whether a person is workman or not and he ought to have referred the dispute to Labour Court instead of refusing to refer the same holding that the petitioner was not a workman ; that refusal to refer the dispute has resulted in depriving the petitioner of his legitimate right of review of his case u/s 11 of the Industrial Disputes Act (Central), 1947 as well as equivalent provisions of the Act, as such, the impugned order dated 19.8.2002 passed by the Deputy Labour Commissioner is absolutely illegal and arbitrary.

7. Learned Counsel for the petitioner contends that it is well settled law that the appropriate Government is bound to refer the dispute where conciliation proceedings fail and that the Deputy Labour Commissioner, without considering the documentary evidence has wrongly refused to refer the case of the petitioner before the Labour Court on the basis of a wrong finding that the petitioner is not a workman. He further submits that the nature of duties of the petitioner was not supervisory or managerial and the Deputy Labour Commissioner had no jurisdiction to decide the dispute u/s 2A of the Act.

8. Learned Counsel for the petitioner has challenged the impugned order of the Deputy Labour Commissioner refusing to refer the dispute to the Labour Court mainly on the ground (i) that the impugned order having adjudicated upon the merits of the case. Deputy Labour Commissioner has exceeded the jurisdiction which vitiates the order impugned ; (ii) that while refusing to refer the dispute to the Labour Court, the Deputy Labour Commissioner did not apply his mind and

passed the impugned order on irrelevant consideration and not supported by any reason ; (iii) that the impugned order cannot be substituted by the reasons disclosed in affidavits and, therefore, the same is vitiated in the eyes of law; and (iv) that the impugned order being based on non-consideration of un-rebutted pleadings on record, the same is vitiated in law.

9. In support of his (i) contention, learned Counsel for the petitioner, placed reliance in Sharad Kumar Vs. Govt. of NCT of Delhi and Others, wherein the apex Court held as under :

"testing the case in hand on the touchstone of the principles laid down in the decided cases, we have no hesitation to hold that the High Court was clearly in error in confirming the order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the respondent, i.e. Area Sales Executive. As noted earlier determination of this question depends on the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him. We do not find that the State Government or even the High Court has made any attempt to go into the different types of duties discharged by the appellant with a view to ascertain whether he came within the meaning of Section 2(s) of the Act. The State Government, as noted earlier, merely considered the designation of the post held by him, which is extraneous to the matters relevant for the purpose. From the appointment order dated 21.4.1983/22.4.1983 in which are enumerated certain duties which the appellant may be required to discharge it cannot be held therefrom that he did not come within the first portion of Section 2(s) of the Act. We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter, the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus, the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."

10. Similar view was taken by the apex Court in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, holding that:

"where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function u/s 10(1) of the Act.....

.....

Further, 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, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

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, acting on behalf of the Government and that of the Government itself cannot be sustained.

.....

It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question, whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly, not permissible."

11. Apart from above decisions, the learned Counsel also placed reliance in *V. Veerarajan and others Vs. Government of Tamil Nadu and others*, wherein it has been held that :

"If the dispute in question raises a question of law the appropriate Government should not purport to reach a final conclusion on the said question 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."

12. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , the apex Court had held as under:

"It was submitted by the respondent that once a reference has been made u/s 10 of the Act a Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review, limited though it might be. The High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court."

13. *Moolchand Kharati Ram Hospital K. Union Vs. Labour Commissioner and Others*, , is to the same effect. In *M.P. Irrigation Karamchari Sangh Vs. State of*

M.P. and Another, . Hon"ble Supreme Court considered its decision in Bombay Union of Journalists v. State of Bombay and held as under :

"But it would not be possible to accept the plea that the appropriate Government is precluded for considering even primer 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.

We find that the approach made by the High Court was wrong and the reliance on the above passage on the facts of this case, is misplaced and unsupportable. This Court had made it clear in the same judgment in the sentence preceding the passage quoted above that it was the province of the Industrial Tribunal to decide the disputed questions of fact.

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.

Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide."

14. Ram Avtar Sharma and Others Vs. State of Haryana and Another, ; Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., and A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, are to the same effect.

15. Supporting his second contention, the learned Counsel for the petitioner drew my attention to the following portions of Chapters XII, XV and XXIII of Administrative Law by Professor Wade (7th edition) :

"The House of Lords also rejected the Crown"s argument that the minister need have given no reasons and that, therefore, such reasons as he volunteered to give could not be criticised. Going still further, the House declared that if in such a case he refused to give any reasons, the Court might have to assume that he had no good reasons and was acting arbitrarily. In other words, the minister may not be able to disarm the Court by taking refuge in silence. In this way the Court would have power to impose, in effect, an obligation to give reasons for discretionary decisions.

.....

There is a subjective element in all discretion, and expressions such as "if the

minister is satisfied" differ only in degree from a power to act "as he think fit". The limits of that type of power have already been explained; the minister must act reasonably and in good faith, and upon proper grounds. In principle the same limits should operate howsoever subjective the language, in order that the Courts may always afford protection against an abuse of power such as the Act cannot have been suppose to authorise.

.....

Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is renewable or not, and so he may be deprived of the protection of the law. A right to reasons is, therefore, an indispensable part; of a sound system of judicial review. Natural justice may provide the best rubric for it since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. No single factor has inhibited the development of English Administrative Law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions.

.....

Reasoned decisions are not only vital for the purpose of showing the citizen that there is receiving justice; they are also a valuable discipline for the tribunal itself.

.....

The Court of Appeal has emphasised that the statutory duty to give reason "is a responsible one and cannot be discharged by the use of vague general words". It requires, as the High Court has held, "power, adequate reasons" being "reasons which will not only be intelligible but which deal with the substantial points which have been raised". In the same case the Court treated inadequacy of reasons as error on the face of the record, so that an inadequately reasoned decision could be quashed, even if the duty to give reasons was not mandatory."

16. In Union of India (UOI) Vs. Mohan Lal Capoor and Others, , the apex Court has held :

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded by show to be manifestly just and reasonable."

17. In Cyril Lasrado v. Julia Maria Lasrado (2004) 6 ST 156 (paras 10 and 11),

Hon"ble Supreme Court has held as under :

"10. Reasons introduce clarity in order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever, brief, in its order indicative of application of its mind, all the more when its order is amenable to further avenue of challenging. The absence of reasons has rendered the High Court's judgment not sustainable.

11. Even in respect of administrative orders, Lord Denning in *Breen v. Amalgamated Engineering Union*, (1971 (1) All ER 1148), observed "The giving of reasons is one of the fundamentals of good administration. In *Alexander Machinery (Dudely) Ltd. v. Crabtree* (1974 LCR 120), it was observed "failure to give reasons amount to denial of justice". Reasons are link between mind of decision taker to the controversy, in question, or conclusion arrived at. Reasons substitute subjectively by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx" it can, by its silence, render it virtually impossible to the Court to perform their appellate function or exercise the power of judicial review in adjudging the validity of decision. Right to reason is an indispensable part of sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him."

18. In *Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh and Ors.* (2004) 8 ST 147 (paras 29 and 30) it has been held by the apex Court that:

"29. It is well-settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous.

30. We have on the premises aforementioned, no hesitation to hold that the decision of the council of Ministers was *ex facie* irrational whereas the decision of the Governor was not. In a situation of this nature, the writ Court while exercising its jurisdiction under Article 226 of the Constitution of India as also this Court under Articles 136 and 142 of the Constitution of India can pass an appropriate order which do complete justice to the parties."

19. The apex Court in *Madhya Pradesh Special Police Establishment's* case (*supra*) has opined as under :

"It is well settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous."

20. Learned Counsel for the petitioner cited Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, , in which it has been held that :

"That an affidavit cannot be relied on to improve or supplement an order has "been held by a Constitution Bench in Mohinder Singh Gill v. Chief Election Commission, New Delhi.

When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

21. He has also relied upon State Government Houseless Harijan Employees' Association v. State of Karnataka (2001) 1 SCC 610, in support of his (iii) contention wherein the apex Court has held that:

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out."

22. Learned Counsel for the petitioner in support of his (iv) contention, drew my attention to his application dated 20.9.2001, Annexure-1 to the writ petition and various averments made in the rejoinder affidavit and urged that the petitioner has, all along been claiming himself to be a workman but the respondents are falsely not treating him a workman. Moreover, the petitioner never abandoned his services and as he was ill, he utilised his accumulated leave, which was more than 400 days. The petitioner never took voluntary retirement. According to learned Counsel for the petitioner, the work of a Foreman was to ensure that the machines in engine room were used in proper manner and in accordance with time schedule. His duties were to regulate the opening and closing of the machines in the engine room and he did not have any disciplinary control over any person. Neither any work was allotted by him to any person nor he had any administrative control over any one. The petitioner was obeying the orders of Assistant Manager who used to allot work not only to the petitioner but also to other workmen. It is stated that therefore, the petitioner was not performing any supervisory or administrative work but, in fact, he was performing manual work.

23. Sri V.B. Singh, learned Senior Advocate appearing for the respondents submits that the impugned order refusing to refer the dispute on the ground that the petitioner was not a workman is an administrative order which has been passed after the authority has satisfied itself subjectively that the petitioner was not a workman on the basis of material available on record. He further submits that the writ petition as filed under Article 226 of the Constitution is not maintainable against such an administrative order. He lastly submits that the post of Foreman in the Respondent No. 3-establishment is purely supervisory and administrative, in nature and petitioner was performing supervisory and

administrative functions and was drawing salary of Rs. 6,290 per mensem apart from other benefits such as medical claims, LTC etc. According to him, the impugned order is just and legal as the petitioner was not a workman within the meaning of the definition as contained in Section 2(z) of the Act. Moreover, the petitioner was gainfully employed in other business and was absenting himself without any information or leave and, as such, he has rightly been presumed to have voluntarily retired from service and that in any case, his services have not been terminated by the employers.

24. He further submits that from a bare perusal of Annexures CA-2 to CA-5 it is crystal clear that the powers, duties and responsibilities of Foreman and workmen in the Respondent No. 3 concern are altogether different. A Foreman holds a supervisory and administrative post whereas that is not the case of workmen. He has relied upon the comparative chart of nature of duties, powers and responsibilities of both sets of employees in the Respondent No. 3-establishment in support of his arguments that petitioner was not a workman.

Nature of duties, power and responsibilities of: Foreman Workmen 1. Foreman is governed by Workmen are governed by Standing Service Rules for Foreman Orders and Accountant Cadre Employees (hereinafter called as "the Services Rules") 2. Clause 10 of the Service Workmen do not perform duties of Rules provides that the post supervisory nature of Foreman is of supervisory and administrative nature. 3. Clause 13 of the Service Workmen retire on attaining the age of Rules provides that Foreman 60 years. will retire on 30th April of the year when he attains the age of 60 years. 4. Clause 18 of the Service Workmen perform work entrusted to Rules provides that Foreman them by Superiors. will act as guide and Trainer. 5. Clause 15 of the Service Workmen are entitled to gratuity Rules provides that Foreman under the provisions of Payment of is entitled to gratuity for 21 Gratuity Act. days per year on the total number of years of services rendered by him. 6. Clause 20 of the Service Workmen can form Union and Rules prohibits a Foreman participate in its activities. from forming any "Union or participating in Union activities.

25. He states that merely because the petitioner described himself as a workman in his application u/s 2-K of the Act, it would not bring him within the ambit of definition of "workman" as nature of duties and powers exercised by him would determine his status as workman or a supervisor. It is stated that the employers had filed all the requisite documents before the Conciliation Officer denying the fact that he was a workman and it was evident from these documents that the petitioner was discharging mainly supervisory and administrative nature of duties, such as grant of leave to the workmen etc. For making a reference, the authority has to satisfy itself subjectively that the person who is approaching the Government machinery for reference is, in fact, a workman.

26. Reliance has been placed by him on Sultan Singh Vs. State of Haryana and another, , wherein the apex Court has held that an order making reference of industrial dispute u/s 10 of the Act is an administrative and not quasi-judicial

order based on subjective satisfaction of Government and no lis is involved. In Prem Kakar Vs. State of Haryana and Another, , a question arose whether an employee was a workman. The Government informed the workman that his case was not covered by the definition of the term "workman" under the Act, therefore, refused to make reference. The workman approached High Court for writ of mandamus which was dismissed. He then approached the apex Court and the appeal was dismissed by the apex Court. In appeal it was contended that the question whether an employee was a workman is a disputed question of facts and law, and therefore, could only be decided by the Labour Court on a reference and not by the State Government while exercising its powers u/s 12(5) of the Act, which was rejected holding that the order of the Government acting u/s 10(1) read with Section 12(5) of the Act passed after subjective satisfaction is an administrative order and not a judicial or a quasi-judicial one.

27. In The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, , the apex Court has summarised the law decided in earlier case as under :

1. "The appropriate Government would not be Justified in making a reference u/s 10 of Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference :

2. The order of the appropriate Government. making a reference u/s 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.

3. An order made by the appropriate Government u/s 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and :

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

28. For the controversy involved in the Instant case, the following observations of the apex Court in Secretary Indian Tea Association's case (supra) are relevant :

"Before making a reference u/s 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

.....

From the order of the State Government we find that while deciding the question whether Respondent No. 1 was a workman, it took into consideration the salary and allowances of Respondent No. 1 drawn at the relevant time and also the nature of work. Respondent No. 1 who has appeared in person did not dispute the salary and allowances, etc., as indicated in the order of the Government but urged that his responsibilities were neither supervisory nor managerial in nature."

29. In the instant case, it is apparent that the matter required any detailed investigation of nature of duties performed by the petitioner and whether he absented himself as claimed by the respondents or had availed leave due to him as claimed by the petitioner. The petitioner had disputed the claim of the respondents before the Conciliation Officer, inter alia, that he was a workman and was not discharging any supervisory or administrative duties. From the order impugned, it is evident that the Deputy Labour Commissioner has not given any reasons, but only conclusions and it has been held that the appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended and that petitioner was not a workman within the meaning of the Act, therefore, the dispute cannot be referred. Power to make reference u/s 10 of the Act after subjective satisfaction is different from power of adjudication exercised by the Labour Court which adjudicates disputes on the basis of pleadings and evidence before it. It is apparent that the questions of fact put forth by the parties before the Deputy Labour Commissioner even of such nature which required adjudication by oral evidence. He is only empowered under the Act to bring the parties to negotiating table for settlement of dispute. In case no settlement is arrived at, he is to submit failure report as the dispute exists and is apprehended. According to principle No. 5 in Secretary Indian Tea Association's case (supra), quoted in this judgment, it is always open to the party to the dispute to establish before the Labour Court that the reference is not an industrial dispute and that claimant is not a workman only for the reason to bring industrial peace and harmony by settlement process. The conciliation authority has been empowered to record his subjective satisfaction and the High Court can, in appropriate cases, issue a writ of mandamus under Article 226/227 of the Constitution for making a reference where the authority has not exercised its jurisdiction properly. The State Government/Deputy Labour Commissioner, the Conciliation Officer, acts like a valve of filter out the demands/cases which may be settled by mutual agreement so that speedy justice is available to workman under the forum of industrial dispute. While recording his subjective satisfaction, the authority is not adjudicating upon the question of workman and existence of an industrial dispute as has been held in a catena of decisions referred above. In case of Sultana Singh (supra) also the apex Court has held that the appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. The judgment in the case of Prem Kakar (supra) was given in the own peculiar facts of that case. The ratio of the case cited by the respondents is not applicable to the fact and circumstances of this case and they are clearly distinguishable. The apex Court in later decisions has held and laid

down the law finally that disputed questions of fact are to be decided by the Labour Court on basis of evidence and not by the conciliatory authority. The Deputy Labour Commissioner has not given any reason and only recorded conclusion holding that the petitioner was not a workman and refusing to refer the dispute to Labour Court.

30. For the reasons stated above, the petition succeeds and is allowed. The impugned order dated 19.8.2002 passed by Deputy Labour Commissioner, Agra Region, Agra is quashed and he directed to decide the application of the petitioner afresh according to law and in the light of the observations made above. The parties shall bear their own costs.