

(2017) 04 AHC CK 0107
In the Allahabad High Court
Case No : 10506 of 2017

Ramesh Chandra Maharana

APPELLANT

Vs

State Of U.P. & 2 Others

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947, Section 5(d), Section 2-A, Section 4-K - Power to include other undertaking in any adjudication - Dismissal, etc. of an individual workman, to be deemed to be an industrial dispute - Reference of disputes to Labour Court or Tribunal

Citation : (2017) 04 AHC CK 0107

Hon'ble Judges : Saumitra Dayal Singh

Bench : Single Bench

Advocate : Rahul Jain, Sunil Kumar Tripathi

Judgement

1. This writ petition has been filed seeking following relief :- (i) to issue a writ of certiorari, order or direction in the nature of certiorari quashing the order dated 15.12.2016 (Annexure-10 to the writ petition) and the order dated 25.06.2014 (Annexure-6 to the writ petition) passed by the respondent no. 2.

(ii) to issue a writ of mandamus, order or direction in the nature of mandamus commanding the respondent no. 2 to send his report in the matter of the petitioner to the State Government and further for direction to the State Government to refer the matter to the proper forum expeditiously.

2. Affidavits have been exchanged in this matter. With consent of parties, this writ petition is being finally disposed of at this stage.

3. It is the case of the petitioner that he was appointed on a post of ECG technician at Santosh Medical College, Ghaziabad in 1997 and his services were terminated with effect from 10.10.2013 after conclusion of some departmental inquiry proceedings.

4. It is the further case of the petitioner that on 21.10.2013 he had made an application claiming dismissal under Section 2-A of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "Act") which came to be registered as Conciliation Proceeding Case No. 195 of 2013.

5. It appears from the record that in the aforesaid proceedings before the Deputy Labour Commissioner, Ghaziabad both sides workmen and employer were heard but the matter remained pending and the Conciliation Officer eventually dropped the conciliation proceedings on 25.06.2014. At that stage petitioner had filed an application to reconsider the reconciliation application.

6. This application was directed to be decided within six months by an order passed in Writ Petition No. 3361 of 2016.

7. It is the case of the petitioner that the later application also remained pending despite specific directions issued by this Court which led petitioner to file a civil contempt application.

8. Subsequently, on 15.12.2016 the Deputy Labour Commissioner rejected the application of the petitioner to reconsider the matter of conciliation. However, he has not submitted his report in this regard to the State Government.

9. Learned counsel for the petitioner submits having rejected petitioner's application the Deputy Labour Commissioner has not filed his report which when filed may become the starting point for consideration of the case under Section 4K of the Act with respect to making of a reference of an industrial dispute by the State Government. He therefore prays for a mandamus to the said Deputy Labour Commissioner to submit his report.

10. Sri Sunil Kumar Tripathi, learned counsel for Santosh University has filed counter affidavit and raised a preliminary objection that the petitioner has statutory remedy before the Labour Commissioner. For this purpose he relies on the a notification dated 19.01.1972 which reads as under:- "(2) where a conciliation officer refuses to entertain in application he shall record in writing his reason for such refusal and communicate them to the application who may within one month of the receipt there of represent Deputy Labour Commissioner (Industrial Relation) at Kanpur, the concerned Regional Deputy Labour Commissioner at Kanpur, Allahabad & Meerut whose decision in the matter shall be final."

11. He also relies on judgment of the Supreme Court Workmen Vs. I.I.T.I. Cycles of India Ltd. and others reported in 1995 Supp (2) SCC 733 wherein the Supreme Court has held that it is not obligatory on the State Government to make a reference of the dispute in each and every case and that it is to be made keeping in mind the objective of industrial peace and smooth industrial relations, etc. He has also relied on a judgment of Supreme Court Secretary, India Tea Association Vs. Ajit Kumar Barat and others reported in (2000) 3 SCC 93 (para 7) which reads as below:- "The law on the point may briefly be summarised as

follows:

1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is 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 under Section 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 under Section 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.
5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."
12. In so far as the judgments of the Supreme Court are concerned there is no quarrel with the proposition that the power of the State Government to make a reference is an administrative power which has to be exercised on valid considerations as held in two judgments of the Supreme Court relied by the learned counsel for the respondent. However, that stage has yet not reached.
13. In so far as the objection as to the availability of remedy of appeal is concerned, while the State Government has no doubt created remedy whereby a person aggrieved by nonentertainment of application for conciliation may approach a higher authority, the said provision made by the notification does not appear to place a fetter on the power of the State under Section 4K of the Act.
14. Section 4K of the Act gives to the State Government a power to refer for adjudication by a Labour Court or Tribunal, as the case may be, if it is "of opinion that any industrial dispute exists or is apprehended". Further, from a plain reading of that section, this power may be exercised "at any time", by an "order in writing".
15. Thus, it is plain that the only limitations placed by the legislature on the power of the State Government to refer a dispute are that (i) it must form an opinion as to existence or apprehension of an industrial dispute & (ii) such order must be in writing.
16. The proceedings before the Conciliation Officer though required to be conducted by way of first response to adress the industrial dispute either existing

or likely to arise, is not a precondition to be satisfied before exercise of powers under Section 4K of the Act. Conciliation works on principle of amicable resolution of differences while reference leads to adjudication.

17. Besides, such intention does not emanate, from a plain reading Section 4K or other provisions of the Act. On the other hand from a plain reading of Section 5(D) only speaks of certain powers of Conciliation Officers. On the other hand, Rule 4(4) of U.P. Industrial Disputes Rules, 1957 reads as under: "4(4). Where a reference has been made by the State Government in the matter of a dispute under Section 4K of the Act to the Tribunal or Labour Court or the Adjudicator, the Conciliation Officer concerned shall forthwith forward to the Tribunal or the Labour Court or the Adjudicator concerned, the file of the Conciliation Board relating to that matter, immediately after the application in Form I is filed by the Union."

18. The said rule only requires the Conciliation Officer to forward his record to the Labour Court etc. whenever a dispute is referred for adjudication. It clearly includes a situation where a dispute may get referred during pendency of Conciliation proceedings. Thus, the Rule does not suggest that Conciliation proceeding must have been completed before a reference is made. Read with section 4K, the necessary implication that flows is otherwise.

19. Also, the appeal remedy, if any, has been provided where the conciliation officer refuses to entertain an application for conciliation and not in a case, as the present, where the application had been entertained, parties heard & thereafter the application appears to have been rejected i.e. matter could not be successfully settled through conciliation.

20. In fact, in such a situation, keeping in mind the object and scheme of the Act, it becomes imperative for the State Government to examine the matter in light of its powers under section 4K of the Act - whether a reference is warranted. Keeping the matter pending thus, without taking any decision on the same defeats the purpose of the Act itself.

21. Moreover, the difference between "refusal" to entertain implies negation of exercise of the power itself whereas "rejection", follows or arises upon exercise of jurisdiction. Thus it is doubtful if the remedy of appeal would be available where the authority has not refused to exercise his power, rather, it has exercised that power but rejected the case/claim as appears to have been done in this case.

22. Moreover, as discussed above the remedy of conciliation & therefore of appeal therefrom, if any, under the notification is not a sine qua non for the application of section 4K of the Act.

23. The State Government should act efficiently and ensure that a matter does stay pending for long either before conciliation officer or from appeal therefrom or before it for section 4K purposes. The governing principle has to be to ensure the dispute or likely dispute is resolved with utmost expedition, if possible

through conciliation or through adjudication.

24. In the instant case it is more than apparent that the conciliation proceedings have miserably failed and yet, the workmen continues to feel aggrieved and this status has remained for four years now, without any resolution.

25. It would, therefore, be now open to the State Government to decide whether it is a fit case for making a reference under Section 4K of the Act or not.

26. Without going into merits of the claim raised by the parties and without making any observation as to the same, it is provided that the State Government may consider the matter under Section 4K of the Act after obtaining the necessary report from the Deputy Labour Commissioner, Ghaziabad. This exercise may be completed within a period of one month from the date of production of a certified copy of this order which the petitioner undertakes to file before the Deputy Labour Commissioner within two weeks from today.

27. Learned Standing Counsel may also send a copy of this order to the Labour Commissioner, Ghaziabad. A copy of this order be provided to the learned Standing Counsel without payment of charges. With above observations the writ petition is disposed of.