

(2002) 03 BOM CK 0075

In the Bombay High Court

Case No : O.O.C.J.W.P. No. 2838 of 1990

Ramruch Pande and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (2002) 94 FLR 961 : (2002) 3 LLJ 600

Hon'ble Judges : S.J. Vazifdar, J; R.M. Lodha, J

Bench : Division Bench

Advocate : R.S. Pai, instructed by S. Udeshi and Co, for the Appellant; Pushkar Gadkari, for T.S. Shetty, for the Respondent

Judgement

R.M. Lodha, J.—Heard Mr. Pai, learned counsel for the petitioners and Mr. Gadkari, learned counsel for respondent No. 3.

2. The petitioners seek the direction to the State Government to refer the Industrial Dispute between the respondent No. 3 viz. Rashtriya Metal Industries, Mumbai and the present petitioners. They are aggrieved by the order dated March 6, 1987 whereby the State Government has rejected the prayer made by the Union for reference of industrial dispute under Sub-section (5) of Section 12 of the Industrial Disputes Act on the ground that union has not substantiated its demand.

3. Mr. Pai, learned counsel for the petitioners submitted that the order dated March 6, 1987 is illegal as it was not open to the appropriate Government to go into the merits of the demand while considering the question whether industrial dispute deserves to be referred u/s 12(5) of the Industrial Disputes Act. In support of his contention Mr. Pai relies upon the judgment of the Apex Court in M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, ; Ram Avtar Sharma and Others Vs. State of Haryana and Another, and Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, .

4. On the other hand Mr. Gadkari, learned counsel appearing for the respondent No. 3 submitted that prior to the present writ petition the Union filed the writ petition bearing Writ Petition No. 1191 of 1987 before this Court which was withdrawn on June 11, 1990 and therefore it is not open to the workmen to file fresh writ petition on the self-same contentions.

5. First we take up the objection raised by the learned counsel for respondent No. 3 about the effect of the earlier writ petition filed by the union. It is true that the Union filed Writ Petition No. 1191 of 1987 challenging the order dated March 7, 1987 passed by the appropriate Government rejecting the Union's prayer for referring the industrial dispute between Rashtriya Metal Industries (respondent No. 3) and the workmen employed by it. However, we find that the writ petition filed by the Union was withdrawn. The present writ petition filed by the petitioners was dismissed by the learned single Judge in limine on the ground that Union had earlier filed the writ petition which was subsequently withdrawn. The present petitioners preferred appeal bearing Appeal No. 1343 of 1990 and the Division Bench of this Court on December 20, 1990 set aside the order of the learned single Judge, restored the present writ petition to file, issued rule nisi observing that mere fact that the union had filed the writ petition which it withdrew subsequently cannot affect the rights and contentions of the petitioners and other similarly situated workmen who were not members of the union. The Division Bench further observed that the filing and withdrawal of such a petition cannot bar the petitioners from independently filing a writ petition and agitating their claims. That being the position, the contention of the learned counsel for the respondent No. 3 that earlier union had filed writ petition which was withdrawn and, therefore, present writ petition is not maintainable, has to be overruled. Be it noted that at the relevant time when the writ petition was filed by the present petitioners it pertained to the jurisdiction of the learned single Judge but by amendment in the High Court Rules, Original Side, the subject matter of writ petition now pertains to the jurisdiction of Division Bench.

6. The appropriate Government after considering the report submitted by the Conciliation Officer under Sub-section (4) of Section 12 of Industrial Disputes Act found that the union has not substantiated its demand and therefore, was of the view that no case for reference u/s 12(5) is made out. We are afraid, the approach of the appropriate Government cannot be justified as it is not open to the appropriate Government to go into the merits of the demand while considering the question whether industrial dispute between the employer and employee needs to be referred for adjudication or not. It does seem in the present case that the State Government considered the merits of the claim and then found that the union failed to substantiate its demand and because of that it refused to refer the industrial dispute for adjudication. We need not multiply the decisions, suffice, however, to observe that in *Telco Convoy Drivers Mazdoor Sangh* (supra) the Apex Court held that while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function and that in performing this administrative

function the Government cannot delve into the merits of the dispute. It is where the appropriate Government erred. In the circumstances, the writ petition deserves to be allowed and the industrial dispute needs to be referred.

7. We, accordingly, direct the first respondent to refer the dispute as per notice of demand raised by the union on May 24, 1986 and further amended by notice of demand dated September 9, 1986. The reference should be made by the first respondent to the concerned Tribunal within three months from the date of receipt of the order of this Court.

8. Rule is made absolute in the aforesaid terms. No Costs.

9. Certified copy expedited.