

(1968) 11 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 569 of 1966

Rewa Coal Fields Ltd., Dhanpuri, Shahdol and Another

APPELLANT

Vs

Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur
and Others

RESPONDENT

Date of Decision : 25-11-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 11
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)

Citation : AIR 1969 MP 174 : (1969) JLJ 433 : (1969) MPLJ 146

Hon'ble Judges : P.V. Dixit, C.J;G.P. Singh, J

Bench : Division Bench

**Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dubey, Government
Advocate for Respondent No. 2 and J.N. Bhatnagar, for the Respondent**

Final Decision : Dismissed

Judgement

Singh, J.

The petitioner No. 1. The Rewa Coal Fields Limited owns Burhar and Amlai Collieries in Madhya Pradesh. The petitioner No. 2 is the Managing Agent of the petitioner No. 1. The Petitioners by this petition under Article 226 of the Constitution challenge a reference of an industrial dispute between them and their workmen made by the Central Government u/s 10 of the Industrial Disputes Act, 1947.

It seems that the petitioners dismissed seventeen of their workmen with effect from 9th June, 1964. An industrial dispute was raised on behalf of the workmen before the Conciliation Officer. No settlement was arrived at and the Conciliation Officer reported the matter to the Central Government. The Government, however, declined to refer the dispute to any tribunal. This order was made on 16th June, 1965 u/s 12(5) of the Act, and it is stated in it that the Government of India do not consider the dispute fit for reference to an Industrial Tribunal for

adjudication because the workmen were dismissed for proved misconduct. It is further stated in it that the union failed to substantiate the allegation of victimisation. Then on 19th March 1966, the Government made the order, which is impugned in this petition and by which the dispute was referred for adjudication to the Industrial Tribunal, Bombay. The dispute, which is mentioned in the schedule to this order is, whether the dismissal of seventeen workmen, (Whose names are given in the schedule) with effect from 9th June, 1964 was justified, and if not, to what relief are they entitled.

In this petition, the challenge to the impugned order is on the ground that an order of the Government declining to refer a dispute for adjudication to Industrial Tribunal is final and the same dispute cannot be made subject-matter of reference by another order.

The point raised relates to the ambit and scope of Sub-section (1) of Section 10 of the Industrial Disputes Act. The sub-section is worded in wide language and enables the appropriate Government to make a reference at any time when it is of opinion that any industrial dispute exists or is apprehended. The power conferred by this section is administrative in nature, and therefore, the principles applicable to the exercise of judicial or quasi-judicial powers cannot be applied for construing the section. In case of a judicial power, once that power is exercised and a dispute is decided, the decision operates as *res judicata* and cannot be reviewed at a subsequent stage unless a power of review is specifically conferred by statute. But in case of an administrative power, the doctrine of *res judicata* has no application and an order made in the exercise of that power can be reviewed by the same authority. It, therefore, cannot be said that if the appropriate Government refuses to make a reference at one stage, it cannot thereafter change its mind and make a reference for adjudication of the dispute. There is yet another way of looking at the sub-section. The sub-section only speaks of an order referring the dispute; it does not speak of an order refusing to make a reference. The sub-section only enables the appropriate Government to make a reference of an industrial dispute for adjudication to appropriate Tribunal. When- the Government declines to make a reference, it does not exercise any power under the sub-section rather it refuses to exercise the power conferred by the sub-section. The exercise of power under the sub-section takes place only when a reference is made. It cannot, therefore, be said that the power conferred by the sub-section is exhausted by refusing to make a reference, and cannot again be exercised by ordering that a reference be made. The view, that we have taken, is supported by a number of cases; *Panipat Woollen and General Mills Co. v. Industrial Tribunal* 1962 1 Lab LJ 555, *L. H. Sugar Factories and Oil Mills v. State of U. P.* 1963 1 Lab LJ 340 (All); *Vasudeo Rao v. State of Mysore* 1963 2 Lab LJ 717 (Mys); *Shanker Flour Rice and Dal Mills v. Labour Court Lucknow* 1966 1 Lab LJ 807.

The only case which has taken a contrary view is a decision of the Punjab High Court. *Gondhara Transport Co. (Pvt) Ltd. Vs. State of Punjab and Others*, .

According to this case, the power to make a reference "at any time" conferred by the sub-section terminates with an order of the Government either making or declining to make a reference. We do not agree that the words "at any time" can be so construed as to deprive the Government of its power to make a reference after it once decides not to make any reference. As we have already said, there is no exercise of the power under the sub-section before any order of reference is made, and therefore, the question whether that power is exhausted after once it is exercised, does not arise in cases in which the Government had earlier only declined to make a reference. In our opinion, the reference impugned in this petition was properly made by the Central Government.

The petition fails and is dismissed with costs. Counsel's fee Rs. 100/-. The outstanding amount of security, if any, shall be refunded to the petitioners.