
(1979) 06 MAD CK 0040
In the Madras High Court

S. Arumugam

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 17-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 11A, 12

Citation : (1979) 06 MAD CK 0040

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Judgement

Varadarajan, J.—This writ petition under Article 226 of the Constitution of India is for the issue of a writ of mandamus or any other appropriate writ or order directing the first respondent, Government of Tamil Nadu, to reconsider the decision contained in G.O. Rt. No. 1397 Labour and Employment Department, dated 24-6-1976 declining to make a reference u/s 10(1) of the Industrial Disputes Act, 1947. The petitioner had joined service under the second respondent, the management of Tamil Nadu Industrial Development Corporation Ltd., Madras as Time Keeper on 9-5-1968 and was subsequently promoted as Assistant. The second respondent issued a memo dated 26-4-1974 to the petitioner charging him with having made false claim for travelling allowance for journey by the second class from Madras to Erode whereas he had actually travelled only by third class. Later another memo dated 30-4-1974 was issued to the petitioner alleging that in the medical bill, the consultation charges, cost of medicines, and fee paid for house visits made by the Doctor were illegally included. The petitioner submitted his explanation on 21-5-1974 denying both the charges. There was a domestic enquiry on 11-7-1974, 15-7-1974 and 17-7-1974 and the petitioner was found guilty on 22-7-1974 of all the charges and he was dismissed from service on 29-7-1974 in pursuance of that finding. Thereupon he approached the conciliation officer for raising an industrial dispute on 12-8-1974, The second respondent was called upon to offer his remarks on the petitioner's application and he did so. The conciliation officer submitted a

failure report on 3-3-1975. It is seen from the records that in the report the conciliation officer, (Labour Officer, II Madras) has stated:

On the whole it looks that the management have not adduced any sufficient grounds of the reason to prove the termination of services of the petitioner and their action is not free from suspicion in regard to their motive since Thiru S. Arumugam (petitioner) was an active office bearer, general secretary of the TIDCO Employees' Union. In the circumstances stated above, I consider that the result of the management's action may be subjected to judicial scrutiny.

In these circumstances he recommended the following issues being referred for adjudication before the Labour Court, Madras namely:

- (1) Whether the non-employment of Thiru S. Arumugam is justified; if not to what relief he is entitled ?
- (2) To compute the relief if any awarded in terms of money, if it could be computed?

It is also seen from the records that the Commissioner of Labour, Madras had by letter A3/33032/75 dated 18-4-1975 addressed to the Government stated that for the reasons stated by the Labour Officer, II Madras in his confidential report, he recommends that the issue in dispute may be referred for adjudication by the Labour Court, Madras, But by the impugned order the Government declined to make reference observing that the petitioner had been given example opportunity to prove his innocence and the charge has been proved and the Government, therefore, did not refer the issue for adjudication. The writ petition has been filed to quash this order and direct the Government to reconsider the question of making a reference of the dispute for adjudication,

2. The petitioner's case is that the Committee mentioned in paragraph 9 of the affidavit filed in support of the writ petition consisting of the Managing Director of the second respondent, Secretary to Government, Labour and Employment Department, Secretary to Government, Industries Department, and the Commissioner of Labour discussed the matter on 15-6-1976 and the Committee consisting of the Managing Director of the second respondent objected to his case being referred for adjudication, and that this extraneous consideration has weighed with the Government in declining to make a reference. The petitioner's further case is that in view of Section 11A of the Industrial Disputes Act, the first respondent, the Government of Tamil Nadu has no option but to refer the dispute for adjudication.

3. The second respondent has not filed any counter-affidavit but he was represented by counsel in Court. The first respondent contends that the Committee is for deciding whether disputes in Government undertakings and public sector undertakings had to be referred or they could be settled amicably and that they have passed the impugned order after considering the case with the help of the Committee and also on the basis of the facts made available to

them as well as on the basis of the report of the Labour Officer. They also contended that Section 11A will not entitle the petitioner to have a reference made as of right,

4. The learned Counsel for the petitioner submitted that an extraneous matter, namely, the report of the Committee of which the Managing Director of the second respondent also was a member has been taken into account in declining to make a reference and that the order of the Government declining to make a reference is, therefore, not valid and the matter has to go back to the Government for reconsideration of the question whether a reference should not be made. He also submitted that if a reference is made u/s 11A, the Labour Court may give such other relief to the workman including the award of a lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Certainly if a reference is made the Labour Court can go into the question whether the punishment of dismissal from service is proper or whether a lesser punishment is called for in the circumstances of the case. A division Bench of the Gujarat High Court has observed in *Kamdarsangh v. State of Gujarat* 1977-II L.L.J. 353, thus:

What lies in the ambit of the Government's jurisdiction for not making a reference is to consider whether a prima facie case for reference existed or not and whether certain grounds, as pointed out by their Lordship, it was not expedient to make a reference as for example, when the claim was patently frivolous clearly belated or due to its adverse impact on the industrial relations in the State. Therefore, it is on these mandatory guidelines that this statutory discretion has to be exercised by taking into consideration only these relevant guide lines. It is true that as pointed out at page 1622, no elaborate reasons would be necessary but whatever reasons would be necessary but whatever reasons are given have to stand a public scrutiny and even a writ of mandamus would lie if the reasons given show that the Government took into account a consideration which was irrelevant or foreign or that the Government had gone beyond its province by reaching final decisions on the questions of law or disputed questions of fact.

The other decision in *Prem Kakar Vs. State of Haryana and Another*, relied upon by Mr. Divecha clearly reiterates had prima facie found that the concerned workman was not a workman within the definition of the relevant section and, therefore, it was held that that order was not vitiated. That decision could not be pressed in aid in the present case where the Government has ignored the most relevant facts as to the entire change in law enlarging the powers of the Industrial Tribunal for adjudication of this type of disputes u/s 11A and the fact that even an Industrial Tribunal had in this very matter passed a conditional order keeping open this right of the workman. Besides, in any event, after such an exhaustive challenge of the order of the management on various grounds of the inquiry being not proper and the order being completely vitiated as contended by the union, it could never be stated that the union had not given

any proper ground for seeking this reference. Whoever has passed this order on behalf of the Government has completely ignored Section 11A from the statute book and, therefore, such a totally groundless order is no order in the eye of law and must be set aside even in exercise of writ jurisdiction.

There is no doubt that the Government has completely ignored the effect of Section 11A of the Industrial Disputes Act in case a reference is made u/s 10(1) read with Section 12(5) of the Act though Section 11A cannot be stated to compel a reference in all cases. Chandrasekkara Menon, J. has observed in *Kunjuraman Nair v. Secretary to Labour Department Kerala* 1978-II L.L.J. 274:

The Supreme Court has held that the order passed by the Government u/s 12(5) may be an administrative order and the reasons recorded by it may not be justifiable in the sense that their property, adequacy, or satisfactory character may not be open to judicial scrutiny; nevertheless if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane, then the Court can issue and would be justified in issuing a writ of mandamus even in respect of such an administrative order. Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference, it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency.

The learned Judge has further observed:

It is no doubt desirable that the party concerned should be told clearly and precisely the reasons why no reference is made, because the object of Section 12(5) appears to be to require the appropriate Government to state its reasons for refusing to make a reference so that the reasons should stand public scrutiny. But that does not mean that a party challenging the validity of the Government's decision not to make a reference can require the Court in writ proceedings to examine the propriety or correctness of the said reasons. If it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign that no doubt may justify the claim for a writ of mandamus.

As I have stated earlier, the report of the Committee mentioned above which includes the Managing Director of the second respondent had been taken into account. According to the counter-affidavit of the first respondent, the first respondent has come to the conclusion that no reference was called for in the present case. The Government's order does not contain anything to show that the Government went into the truth or otherwise of the fact mentioned by the conciliation officer in paragraph 5 of his failure report that the action of the second respondent is not free from suspicion in regard to their motive having regard to the fact that the petitioner was an active office beanie, namely, General Secretary of the TIDCO Employees Union. What is more, the Government has declined to make a reference in spite of the fact that the motive of the second

respondent has been suspected by the conciliation officer and both the conciliation officer and the Commissioner of Labour have reiterated that the matter may be subjected to judicial scrutiny by making a reference for adjudication before the Labour Court. I am of the opinion that under the circumstances the Government should not have taken into account the report of the Committee which included the Managing Director of the second respondent and that it should have hastened to refer the dispute for adjudication in view of the statement made in the conciliation officer's report that the action taken against the petitioner, namely, dismissal from set vice is not free from suspicion in regard to the motive. The Government has failed to do so and the order cannot, therefore, be sustained. The writ petition is, therefore, allowed with costs. Advocate's fee Rs. 100 to be paid by both the respondents and the Government is directed to reconsider the decision contained in the impugned order and to pass orders on the dispute raised by the petitioner in the light of the relevant materials and this judgment