
(1971) 02 OHC CK 0010
In the Orissa High Court

S. Sadasiva Rao

APPELLANT

Vs

The Government of Orissa and Another

RESPONDENT

Date of Decision : 19-02-1971

Acts Referred:

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

Citation : (1971) 2 LLJ 67

Hon'ble Judges : G.K. Misra, C.J;A. Misra, J

Bench : Division Bench

Judgement

A. Misra, J.—This is an application under Article 226 of the Constitution of India for quashing the decision of the Government of Orissa (opposite party No. 1) contained in its Office Memo No. 8950(3)/LEH., dated 1-8-67 (Annexure G) by which it refused to refer the dispute u/s 12(5) of the Industrial Disputes Act, 1947 and direct reference of the dispute for industrial adjudication on a reconsideration of facts and circumstances.

Government of Orissa,

Labour, Employment & Housing Department.

Office Memorandum

Sub: Industrial Dispute between the management of Shree Durga Glass Works, Barang, Cuttack and their workman Shri S. Sadasiva Rao.

Ref: Letter No. 3725(2) Co. dated 2-6-67 of the D.L.O. Conciliation Officer, Cuttack.

2. On consideration of the above report of the Conciliation Officer, the State Government are satisfied that there is no case for reference of the dispute for adjudication as Shri Rao remained absent unauthorisedly with effect from 7-9-65 and on that date he was deemed to have left his services on his own accord.

Sd./- R.K. Routroy, Under-Secretary to Government.

Memo No. 8950(3) LEH. dated 1-8-67.

Copy forwarded to the Labour Commissioner, Orissa/M/s. Shree Durga Glass Works, Barang, Cuttack/Sri S.S. Rao, C/o Bhima Ice Factory, Cuttack-3.

Sd./- Illegible, Under-Secretary to Government.

3. According to the petitioner, he was a permanent workman employed under opposite party No. 2 with effect from 25-9-69. He took leave for ten days with effect from 26-8-65 and rejoined duties on 6-9-65. He again availed leave for two months from 7-9-65 as the illness of his wife got aggravated. He reported for duty on 8-11-65 on expiry of the said leave, but was not permitted to join. He complained to the Labour Commissioner and District Labour Officer on 26-1-69 alleging refusal of permission to resume duties on 8-11-65. Opposite party No. 2, on being requested to offer his comments on the complaint made by the petitioner, informed the District Labour Officer by its letter No. 1070/66 on 27-10-66 that petitioner's name had been struck off from the attendance register on 9-12-68 as he remained absent without taking permission of the authorities from 7-9-65. The Conciliation Officer acting u/s 12(1) of the Act initiated conciliation on 11-3-67 and gave notice to the parties to attend the conciliation proceedings on 21-3-67. Opposite party No. 2 did not attend the conciliation held and accordingly the Conciliation Officer submitted a failure report u/s 12(4) of the Act to opposite party No. 1 on 2-6-67. On a consideration of the conciliation report, opposite party No. 1 passed the impugned order declining to make a reference as aforementioned.

4. Mr. Nanda, learned Counsel for petitioner, contends that the reasons given in the impugned order for not making a reference are irrelevant, extraneous and not germane to the question in issue. This requires careful examination in the light of the provisions contained in Section 12 of the Act.

5. The relevant scheme of the Act as indicated in Section 12 (1), (2) and (3) contemplates that when any industrial dispute exists or is apprehended, the Conciliation Officer may initiate conciliation proceeding with the object of bringing about a settlement of the dispute. If the Conciliation Officer's efforts fail, he is to make a failure report u/s 12(4). Section 12(5) provides that if on a consideration of the failure report the appropriate Government is satisfied that there is a case for reference, it may do so, but where Government does not make such reference, it is required to record and communicate to the parties concerned its reasons therefore.

6. The position is well settled that in dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4) of the Act, the appropriate Government ultimately exercises its power u/s 10(1), except that Section 12(5) imposes an obligation to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been received u/s

12(4). The discretion to refer or refuse to refer an industrial dispute no doubt is very wide, but nevertheless if the Court is satisfied that the reasons given by Government for its order refusing to make a reference u/s 12(5) are based on considerations which are irrelevant, extraneous or not germane to the question in dispute, or the reasons are not the reasons as contemplated by law, it can quash such an order and issue a writ of mandamus directing reconsideration. In the decision reported in *State of Bombay Vs. K.P. Krishnan and Others*, , on an analysis of the provisions contained in Chapter III of the Industrial Disputes Act, it was held that the question as to whether a case for reference has been made out can be answered in the light of all the relevant circumstances which would have a bearing on the merits of a case as well as on the incidental question as to whether a reference should nevertheless be made or not. In *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , while recognising the power of Government to determine whether a prima facie case has been made out or not, it was observed:

If the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said question of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on the disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal.

7. In the light of the above settled principles, the matter is to be examined whether the decision of opposite party No. 1 in refusing to refer and the reasons given are based on considerations which are relevant and germane to the question at issue.

8. Mr. Nanda urged that the main point of controversy between the parties was regarding the question whether opposite party No. 2 terminated the petitioner's service or whether petitioner abandoned his job. The grievance of the petitioner is that on expiry of his two months' leave, he reported for duty on 8-11-65, but was refused permission to resume duty, while the plea of opposite party No. 2 is that petitioner by remaining absent without permission must be deemed to have abandoned his job. It appears from the conciliation report at Annexure-E that opposite party No. 2 did not attend the conciliation proceedings nor did he cause production of any paper or document in support of its plea. It is no doubt true that abandonment will result in termination of the contract of service, but whether a workman has abandoned his job or not is always a question of fact. In the impugned order which is solely based on the failure report u/s 12(4) of the Act, the only reason given for refusing to make a reference is the alleged unauthorised absence of the petitioner with effect from 7-9-65 as deemed abandonment of service on his own accord. The appropriate authority has not taken into consideration the relevant factors, such as, the claim of the petitioner to have availed two months' leave, his offer to resume duty on 8-11-65 and the refusal of opposite party No. 2 to permit him to do so.

9. The two main points on which the dispute was raised were whether as a fact there was voluntary abandonment of service by the petitioner which resulted in termination of the contract of service, and secondly, in the absence of such abandonment whether the termination amounted to punitive action which was not valid in accordance with law. In deciding the question of allowing or refusing to make a reference of the dispute for industrial adjudication, the appropriate authority has not taken into consideration these aspects which were relevant and germane to the issue, but has simply refused to make a reference relying on the plea of opposite party No. 2 that there was unauthorised absence amounting to abandonment of service. As already indicated, where the dispute raises a question of law, in this case, whether the termination amounted to punitive action, and where it involves a disputed question of fact which in this case is whether there was absence and in the circumstances it amounted to voluntary abandonment of service, they were matters within the province of the Industrial Tribunal. This being so, we are of opinion that apart from non-consideration of facts and circumstances germane to the dispute, the reasons given by Government for refusal to make a reference u/s 12(5) of the Act are not reasons as contemplated by law. Therefore, the impugned order cannot be sustained.

10. In the result, the impugned order contained in Annexure G communicated to the petitioner in Memo No. 8950(3) LEH., dated 1-8-67 is quashed and a writ of mandamus be issued directing opposite party No. 1 to pass an order on a reconsideration of all facts and circumstances in accordance with law. There will be no order as to costs.

G.K. Misra, C.J.

11. I agree.