
(1998) 04 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1317 of 1993

Salal Workers Union (Regd.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1998) 3 SCT 132

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : J.P. Singh, B. Singh, H.L. Choudhary, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.

Counsels heard.

With the consent of the parties, the petition is taken up for final disposal.

The case of the petitioner No. 2 is being espoused by the petitioner union. It is submitted that an Industrial dispute has arisen. This is as to the

nonpromotion of the petitioner No. 2. The Labour and Conciliation Officer has reported failure to settle the matter by way of reconciliation. The

argument raised by the petitioners is that in the matter of referring the dispute for adjudication, the appropriate Government has a very limited

sphere of discretion. If an industrial dispute exists then the appropriate Government cannot go into the merits of the controversy. The merit of the

controversy is to be examined by the forum created under the Industrial Disputes Act.

The legal position in this regard is as under :

In *Bombay Union of Journalists and others v. The State of Bombay and another*, AIR 1964 SC 1617, the Supreme Court did observe that the

Government was not precluded from making a prima facie examination on the merits of the dispute while considering whether a reference was

necessary or not. The Court observed as under :

But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the

dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5)

or not. If the claim made is patently frivolous or is clearly belated the appropriate Government may refuse to make a reference. Likewise, if the

impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse the appropriate

Government may take that into account in deciding whether a reference should be made or not.

But above is not the entire statement of law. In a later portion it was further observed as under :

Similarly on disputed questions of fact the appropriate Government cannot purport to reach final conclusions for that again would be the province

of the Industrial Tribunal.

Thus the appropriate Government can examine the limited issues which may fall within the parameters indicated in case of *Bombay Union of*

Journalists (supra). However, the proposition is well settled that the appropriate Government cannot reach final conclusion on merits. This is

because this falls within the domain of the authorities constituted under the Act.

In *Shambu Nath Goyal v. Bank of Baroda*, AIR 1978 SC 1088, the question was considered. Reference was made to the observations made by

Lord Denning in *Beetham v. Trinidad Cement Ltd.*, 1960(1) All E.R. 274 with a view to find out as to what is meant by the terms ""difference"" and

dispute"". The relevant observation from the above case was quoted and it be noticed again as under :

By definition a ""trade dispute"" exists whenever a `difference' exists and a difference can exist long before the parties became locked in a combat.

It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.

The Supreme Court observed that if the dispute was an industrial dispute, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because in its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those matters.

In *Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal*, AIR 1968 SC 529, it was ultimately concluded that the question as to whether an industrial dispute exists at the date of reference is a question of fact to be determined on the material placed before the Tribunal with the cautions enunciated in *C.P. Sarathy's case*, AIR 1953 SC 53.

In *Nirmal Singh v. State of Punjab*, AIR 1984 SC 1619, the appropriate Government declined to refer the dispute on the ground that the delinquent employee was not workman within the meaning of the definition as occurring in Section 2(s). The Supreme Court came to the conclusion that the question as to whether the person concerned fell within the definition of the 'workman' or not, was a matter which was supposed to be determined by the authority constituted under the Act and the fact that no reasons were given by the Labour Commissioner who was exercising the powers of the appropriate Government for declining the reference, the Supreme Court quashed the order of the Labour Commissioner and gave a direction that reference be made to the Labour Court or to the Industrial Tribunal as the case may be.

In *M.P. Irrigation Karamchari Sangh v. State of M.P.*, AIR 1935 SC 860, the question was whether employees of Chambal Hydel Irrigation Scheme were entitled to dearness allowance equal to that of Central Government employees and that whether they were entitled to Chambal allowance. The State Government refused to refer the matter on the ground that it would cause additional burden on the State Exchequer. This reason was found to be a reason not within the four corners of Sections 10 and 12(5) of the Act. It was observed that as to what are the conditions of service of an employee is a matter which is the special preserve of the authorities constituted under the Act to be decided by the Government on a prima facie examination of the demand. It was further

observed that there may be some cases where the demand is frivolous or perverse, but even in these matters a note of caution was given. It was observed that the Government should be very slow to attempt an examination of the demand with a view to decline reference and the Courts should be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. It was observed "to allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory.

In *Ram Avtar Sharma and others v. State of Haryana and another*, AIR 1985 SC 915 it was observed that where the Government acted on extraneous and irrelevant grounds, which are not germane to determination of the dispute, then the Government can be called upon to reconsider the matter.

In *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar and others*, AIR 1989 SC 1565, it was held that while considering question whether reference should be made or not the Appropriate Government cannot delve into merits of disputes and determine the lis itself. Even the question whether the rejection on the part of the appropriate Government to decline to make the reference on the ground of delay is valid or not requires to be gone into.

In view of the above the Union of India being the appropriate Government, is directed to take further steps. Let appropriate steps be taken within a period of four months. The period of four months would begin from the date of copy of order passed by this court is made available to the respondents by the petitioners.

Disposed of accordingly.