
(2009) 11 BOM CK 0177
In the Bombay High Court
Case No : Writ Petition No. 4527 of 2008

Satish	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A

Citation : (2010) 124 FLR 920

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : R. Dharmadhikari, for the Appellant; R.S. Sundaram, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard by consent.

Petitioner"s request for reference of his Dispute u/s 2-A of the Industrial Disputes Act as to termination of services has been refused. The refusal is communicated by Annexure-IV (pages 19 and 20).

2. It is seen that the reason for refusal is assigned, which reads as follows:-

The claimant was engaged on contract basis on bilateral agreement and thus, his agreement to work with the management ceased to exist at the end of the term of the agreement. As such the matter raised cannot be construed as an industrial dispute." (Quoted from page 20 of the Writ Petition paper-book).

3. Workman has challenged the rejection of reference on the ground that the nature of refusal of reference is such that the Conciliation Officer and appropriate Government, have "decided" the status of the petitioner, holding that a workman has no right of reinstatement on the ground that on the basis of "bilateral agreement", the agreement to work ceased to exist and at the end, the services were terminated.

4. According to petitioner, the action of the respondent No. 1 amounts to an "act

of adjudication" by the Conciliation Officer/appropriate Government.

5. Petitioner is praying to:-

a. Quash and set aside the order passed by the respondent No. 1 dated 9-7-2008 filed at Annexure-IV whereby it has denied to refer the dispute for proper adjudication and further be pleased to direct the Respondent No. 1 to refer the aforesaid industrial dispute to the appropriate Tribunal for adjudication.

[Quoted from page 6 of the Writ Petition paper-book].

6. In fact, Conciliation Officer's duty is to report the failure in conciliation, and if an individual dispute is an industrial dispute, ordinarily upon satisfaction of existence, appropriate Govt., would make a reference.

7. The workman has, therefore, stated that he has a case for interference, and by setting aside the order of refusal of reference, the appropriate Govt., be directed to make a reference.

8. Learned Adv. Mr. Sundaram for respondents has opposed the petition, urging as follows:-

(a) Existence of Industrial Dispute is a sine-qua-non for a reference.

(b) On facts, the respondent Nos. 1 and 2 are satisfied that there does not exist an industrial dispute.

(c) Non-existence of industrial dispute is in the background of relations between the employer and employee.

(d) Due to nature of contract employment, the workman had no right of reinstatement and hence there did not exist an industrial dispute in law.

9. The respondents have placed reliance on following reported judgments to oppose the petition:-

(a) United Labour Union v. Air India Ltd. and others 2005 (104) FLR 1014 (Bom.)

(b) Jeroo Dastur and Others Vs. Union of India (UOI) and Standard Chartered Bank, , and (c) Ministry of Textiles v. Murari Lai Gupta and another 2008 (117) FLR 768 (SC).

10. This Court has perused these judgments.

11. In any of these judgments, the power of making a reference, which is an Executive function of the State, is not shown to be a power of absolute nature and of a prerogative in nature. These precedents do not help the respondents.

12. It is clear that the appropriate Government exercises an Executive function, and has a duty to act fairly. It is obvious that Govt, does not have adjudicatory power while deciding as to existence of an industrial depute. The Govt. may reach a conclusion that industrial dispute does not exist on facts, but again in the guise of arriving at the conclusion as to existence of industrial dispute, cannot do

so by adjudicating upon a right of the workman and the nature of work.

13. In the present case, it appears that as the Government sat in adjudication as to the right of the petitioner to have reinstatement, Reference has been declined, which act of the appropriate Govt., is utterly erroneous. The jurisdiction to adjudicate and/or direct appropriate relief, including recording a finding as to subsistence of contract is a matter to be dealt with by the Labour Court or Industrial Court constituted under the Act to whom the reference would be made.

14. In this situation, the order refusing to make a reference is, on its face, of such a nature that it tantamounts to usurp the powers of the Tribunal to decide upon reference being made.

In the result, the order impugned calls for interference.

The order refusing reference is set aside. The result, which has to follow, is that the reference of industrial dispute as regards claim of the petitioner as to his reinstatement or wrongful termination be made by the respondent No. 1 by issuing appropriate order and notification within ten weeks from today.

In the circumstances, parties are directed to bear own costs.