
(2009) 02 AHC CK 0047
In the Allahabad High Court

Shahid Ahmad Khan

APPELLANT

Vs

Deputy Labour Commissioner, Agra Region and Another

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2009) 2 AWC 1325 : (2009) 121 FLR 230 : (2009) 2 UPLBEC 1171

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Ms. Bushra Maryan, the learned Counsel for the petitioner and Shri Dhruva Narayan, the learned senior counsel appearing for respondent No. 2.

2. It is alleged that the petitioner was working as a sales representative in the industrial establishment of respondent No. 2, which is a pharmaceutical company and that, the provisions of Sales Promotion Employees (Condition of Service) Act, 1976 was applicable to the petitioner. It is alleged that the services of the petitioner was terminated by an order dated 26th of October, 2002 and the petitioner, being aggrieved, raised a conciliation proceeding under the Industrial Disputes Act. It is alleged that there was a failure in the conciliation proceedings and the Deputy Labour Commissioner, after considering the matter, issued an order dated 13th March, 2003, declining to refer the dispute for declining to refer the dispute for adjudication u/s 4K of the U.P. Industrial Disputes Act on the ground that it was not expedient to refer the dispute for adjudication. The reason for declining to refer the dispute was that the petitioner does not come under the category of the definition of the word "workman" as defined under the U.P. Industrial Disputes Act. The petitioner, being aggrieved by the order of the Deputy Labour Commissioner, has filed the present writ petition.

3. The learned Counsel for the petitioner submitted that the Deputy Labour

Commissioner, which is the delegated authority of the State Government, has committed a manifest error in declining to refer the dispute, and that the authority had no power or jurisdiction to decide the question as to whether the petitioner was a workman or not under the U.P. Industrial Disputes Act and that the power to decide this question only remains with the labour court or the Industrial Tribunal. The learned Counsel submitted that the State Government or its delegated authority was vested with the power only to a limited area, namely, as to whether an industrial dispute existed or was apprehended between the parties. The question, whether the petitioner was a workman or a sales promotion employee, was not within the domain of the State Government to consider or decide this matter.

4. In support of her submission, the learned Counsel placed reliance upon a decision of the Supreme Court in *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, and in the case of *Sharad Kumar Vs. Govt. of NCT of Delhi and Others*, . The learned Counsel also placed reliance upon a decision of this Court in *Radhey Shyam Mishra v. State of U.P. and Ors.* 2005 (2) UPLBEC 1181 : 2005 (5)AWC 4010.

5. On the other hand, the learned Counsel for the respondent submitted that the State Government was justified in refusing to refer the dispute on the ground that the petitioner was not a workman and that the authority had satisfied itself subjectively on the basis of the material evidence, that was brought before it, to come to a conclusion that it was not expedient to refer the dispute for adjudication. The learned Counsel submitted that since the petitioner was not a workman under the Industrial Disputes Act, no reference could be made for adjudication u/s 4K of the U.P. Industrial Disputes Act.

6. In *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, the Supreme Court, following the ratio of the decision in *State of Madras v. C.P. Sarathy* 1953 SCR 834 , held that the State Government only issues an administrative order while exercising its powers. The Supreme Court held that the Government could not go into the merits of the dispute and that its functioning was only to refer a dispute for adjudication so that the industrial relations between the employer and its employees may not continue to remain disturbed, and that the dispute, if any, is resolved through a judicial process as speedily as possible. This decision was considered by the Supreme Court again in *Shambu Nath Goyal Vs. Bank of Baroda*, , in which it was held that a reference u/s 10 of the Industrial Disputes Act was an administrative act of the Government, on the basis of an opinion formed by the Government as to the factual existence of an industrial dispute.

7. In *Ram Avtar Sharma* (supra), the Supreme Court again reiterated that the Government only performs an administrative act while making or refusing to make a reference u/s 10 of the Industrial Disputes Act, and that it cannot delve into the merits of the dispute or take upon itself the determination of the lis between the parties. The Supreme Court held that the appropriate Government

could only refer when a dispute existed or was apprehended, and for that purpose, the State Government was permitted to determine, *prima facie*, whether an industrial dispute existed or that the claim was frivolous or bogus. Similar view was again reiterated by the Supreme Court in Sharad Kumar's case (*supra*).

8. In the light of the aforesaid decisions, it is necessary to examine the reason given by the authority to ascertain as to whether the reasons given was germane to the issue or not. From a perusal of the impugned order, it is clear that the State Government has declined to raise the dispute on the ground that the petitioner was not a workman under the Industrial Disputes Act. In my opinion, the reasons given by the authority tantamount to an adjudication, which is impermissible. Adjudication is the function of the Tribunal or the labour court, and the State Government or its delegated authority cannot remit to itself that function, which is exclusively vested with the Industrial Tribunal or the labour court. Consequently, the State Government was not competent to hold that the petitioner was not a workman within the meaning as defined under the U.P. Industrial Disputes Act. Such a matter could only be adjudicated or decided by the Tribunal or the labour court on the basis of the material placed before it by the parties.

9. In a similar matter in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, the Supreme Court held that the dispute, as to whether the persons raising the dispute, are the workmen or not, the same could not be decided by the Government in exercise of its administrative function u/s 10(1) of the Industrial Disputes Act. The said Judgment is squarely applicable to the present facts and circumstances of the case.

10. The Court is of the opinion that the State Government exceeded its jurisdiction and has attempted to usurp the power of the Tribunal by adjudicating a dispute which power was not vested with the Government.

11. In view of the aforesaid, the impugned order, passed by the Deputy Labour Commissioner, declining to refer the dispute cannot be sustained and is quashed, The writ petition is allowed. The matter is again remitted to the authority concerned to exercise its powers and refer the dispute for adjudication if the industrial dispute exists or is apprehended. The order shall be passed by the authority within eight weeks from the date of the production of a certified copy of this order.