

(1987) 12 MAD CK 0015

In the Madras High Court

Case No : Writ Appeal No's. 225 etc. of 1987

Shaw Wallace and Co. Ltd.

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 01-12-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(4), 11A, 12

Citation : (1988) 1 LLJ 177

Hon'ble Judges : M.N. Chandurkar, J;M. Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—All the above writ appeals arise out of writ petitioner challenging orders of the State Government refusing to pass orders of

reference u/s 10 of the Industrial Disputes Act, hereinafter referred to as "the Act," for adjudication. All cases except W.A. 292 of 1987 and 1781

of 1987 fall within the ambit of Section 2-A of the Act arising out of disputes raised by individuals. The common question which requires to be

answered is, "what are the grounds on which the appropriate Government can refuse to refer a dispute for adjudication ?". Though the matter is

not res integre, we are obliged to consider it at some length on account of the contentions raised before us, in particular, that the decisions of the

Supreme Court rendered recently run counter to its earlier pronouncements.

2. Excepting in W.A. Nos. 255, 292 and 1781 of 1987, in all other matters the Government refused to make reference on the ground that there

was fair and proper enquiry by the concerned management and the punishment meted out to the worker concerned was quite appropriate. In

W.A. 255 of 1987, the refusal to make reference was on the ground that the writ petitioner was not a workman as defined by the Act, as he was

holding a supervisory post on a salary of Rs. 2232.25 p.m. In W.A. 292 of 1987, the dispute relates to closure of a unit and the Government

refused to make reference on the footing that the unit was closed because of loss for past four years and that out of 88 workers, 84 persons had

accepted the closure and settled their accounts and the remaining four did not have representative capacity. In W.A. 1781 of 1987 the dispute

relates to payment of bonus. The Government refused to make reference on the ground that the management had already decided to pay ex-gratia

at 8.33 per cent. and the provisions of the Payment of Bonus Act shall not apply to the establishment.

3. Mr. Sanjay Mohan appearing for the appellants in W.A. 255, 290, 292, 520, 685, 708, 811, 849 and 1781 of 1987 submitted at the outset

that cases falling u/s 2-A of the Act would stand on a different footing from cases not covered by the Section. He contended that the Government

is entitled and bound to consider all the relevant circumstances of the case which have a bearing on the merits of the case and decide whether a

prima facie case has been made out for reference. He referred in detail to the judgments of the Supreme Court in *State of Bombay Vs. K.P.*

Krishnan and Others, and Bombay Union of Journalists and Others Vs. The State of Bombay and Another, and submitted that in the case of non-

employment of an individual worker, the Government has to consider prima facie whether there was a fair enquiry, whether the charges against the

worker were made out and whether the punishment awarded was just. According to learned counsel, the order of the Government refusing to

make a reference could be interfered with by Courts only if irrelevant matters are taken into account, if relevant matters are not considered or if the

order is vitiated by mala fides. Reference was also made to the decision in *Hochtief Gammon Vs. State of Orissa and Others, and Prem Kakar*

Vs. State of Haryana and Another, . Then learned counsel referred to the three recent decisions of the Supreme Court *Workmen of Syndicate*

Bank, Madras Vs. Government of India and Another, ; *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, and *V. Veerarajan and*

others Vs. Government of Tamil Nadu and others, and the decisions of the Division Benches of this Court following them and submitted that the

recent decisions of the Supreme Court are rendered by Benches consisting of lesser number of Judges than in *State of Bombay v. K. P. Krishnan*

(supra) and *Bombay Union of Journalists v. State of Bombay* (supra) and hence they are not binding on this Court. He cited the ruling of the Supreme

Court in *The State of U.P. Vs. Ram Chandra Trivedi*, for the proposition that the proper course for the High Court is to follow the decision

rendered by a larger Bench of the Supreme Court and it cannot disregard or skirt the view taken by the larger Bench. He invited our attention to

the decision in *Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs.*, wherein it was held that a judgment which fails to notice

a plain statutory provision has no binding force. The ruling in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, was cited for the

purpose that a decision is only an authority for what it actually decides and the essence in a decision is its ratio and not every observation made

therein. Learned counsel submitted that the recent decisions of the Supreme Court are rendered on the facts of those cases and they have not laid

down general propositions of law.

4. Mr. B. T. Sampath appearing for the appellants in W.A. 717, 861, 865, 930, 1623 and 1642 of 1987 submitted that the discretion of the

Government u/s 10 of the Act to make reference is absolute and unfettered and it is not affected by the introduction of Sections 2-A and 11-A of

the Act in 1965 and 1971 respectively. He contended that even if a mandatory provision of law is ignored by the Government in refusing to make

reference u/s 10 of the Act, the Court should not interfere with the order of the Government and relied on the last paragraph of the judgment of the

Supreme Court in *Bombay Union of Journalists v. State of Bombay* (supra) Learned counsel drew our attention to the observation of the Supreme

Court in *State of Madras Vs. C.P. Sarathy and Another*, and submitted that in making a reference u/s 10(1) of the Act, the Government is doing

an administrative act and the factual existence of an industrial dispute and the 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 to be bad if there was

one. According to learned counsel, the decision of the Supreme Court in *The State of Madras v. C. P. Sarathy and another* (supra) and the one in

Bombay Union of Journalists v. State of Bombay (supra) are the two ends of the spectrum. While in the earlier case, a reference was made by the

Government and the Court refused to interfere, in the latter case, the Government refused to make reference and the Court again refused to

interfere. While referring to the mandatory provision in the second proviso to Section 10(1) of the Act, which deals with disputes relating to public

utility services, learned counsel submitted that in cases which are not covered by Section 22 of the Act, the Government has a discretion to make or

refuse to make reference by considering whether the community is likely to be affected. According to learned counsel, the introduction of Section

11-A of the Act by the Amendment Act XLV of 1971 did not have any impact on the power of the Government u/s 10(1) of the Act to make

reference. Learned counsel invited our attention to the principles enunciated by the Supreme Court in *The Workmen of Firestone Tyre and Rubber*

Co. of India (Pvt.) Ltd. Vs. The Management and Others, and emphasized that there was no reference therein to the powers of the Government

u/s 10(1) of the Act. Learned counsel submitted that even before the introduction of Section 11A of the Act, the Supreme Court had recognised

the power of the Government to consider whether an inference of victimisation could be drawn from the quantum of punishment meted out to the

workman concerned, in *B. B. Cool Co. v. Ram Probesh* AIR 1964 S.C. 486. Referring to the recent judgments of the Supreme Court, learned

counsel submitted that they should be governed by the decision of the Supreme Court in *Bombay Union of Journalists v. State of Bombay* (supra)

as it was the pronouncement of a larger Bench.

5. Mr. Balasubramanian, appearing for the appellants in W.A. 525 of 1987 and W.A. 1622 of 1987 cited the decision of this Court in *The State*

of Madras Vs. The Swadesamitran Printers Labour Union and Others, and that of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and*

Others, and submitted that the question of reference for adjudication has to be decided by the Government on its subjective satisfaction of the

expediency thereof. According to him, the following principles emerge from the decisions of this Court and the Supreme Court rendered between

1951 and 1976 :-

(1) It is necessary for the Government to make reference even if an industrial dispute exists :

(2) The Court cannot substitute its own view to that of the Government with

regard to the necessity for a reference;

(3) The Government can Prima facie consider the merits of the case before deciding whether a reference should be made;

(4) If the reasons given by the Government are irrelevant and extraneous, the Court can strike down the order of the Government; and

(5) The Court cannot straight away direct the Government to make reference. It can only direct the Government to reconsider the matter.

Learned counsel submitted that Section 11A of the Act will come into play only after a reference is made for adjudication. Learned counsel also

submitted that the former decision of a larger Bench of the Supreme Court should be followed in preference to a later decision of a smaller Bench.

In this connection, he cited the decisions of the Supreme Court in *Mattulal Vs. Radhe Lal*, *Union of India (UOI) and Another Vs. K.S.*

Subramanian, and Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . In the last of the cases referred to above, the Supreme Court

had only held that a Bench of two Judges of the Supreme Court cannot overrule or disagree with what was said by another Bench of two Judges in

an earlier case and that the only course open to the later Bench was to refer the matter to a larger Bench.

6. Learned Government Pleader represented that he supported the stand taken by learned counsel for the appellants and adopted their arguments

in toto.

7. In reply to the contentions urged by learned counsel for the appellants, Mr. Chandru appearing for the contesting respondents in W.A. 255,

290, 525, 708 and 849 of 1987 urged that after the introduction of Section 2A and 11A of the Act, every dispute must be referred by the

Government. It is submitted that a fiction is created u/s 2A of the Act by which every dispute shall be deemed to be an industrial dispute, the

natural consequence of which is to take away the jurisdiction of the Government to form an opinion whether an industrial dispute exists or is

apprehended. Learned counsel submitted that the word ""may"" in Section 10(1) of the Act goes along with the words ""at any time"" and that the

Government is entitled to make a reference without any time limit. Learned counsel argued that in effect Section 10(1) of the Act stood modified

by Section 2A, making the first portion of Section 10(1) ineffective. As regards

Section 11-A of the Act, learned counsel invited our attention to the statement of objects and reasons, wherein a reference was made to the recommendation (No. 119) of the International Labour Organisation concerning termination of employment at the initiative of the employer adopted in June 1963, whereby, it was recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. It was submitted by learned counsel that Section 11-A of the Act was introduced for the specific purpose of implementing the recommendation made by the International Labour Organisation and the provisions relating to reference in Section 10(1) and Section 12(5) of the Act should be understood in that background. It was further submitted that the Industrial Disputes Act, as evidenced by its preamble, was to make provision for the investigation and settlement of industrial disputes, and whenever the Government refuses to make a reference, the industrial dispute continues to exist without being settled. The two methods contemplated by the provisions of the Act are settlement and adjudication and if there is a failure of settlement, the dispute has necessarily to be referred for adjudication by the Government. Learned counsel submitted that the object of Section 11-A of the Act was not to empower the Government to decide the quantum of punishment to be awarded to a worker. Learned counsel relied upon the decision of the Supreme Court in *Hochtief Gammon v. State of Orissa* (supra) and argued that a misdirection on a point of law was a ground for interference by the Court. Learned counsel placed reliance on the recent decisions of the Supreme Court and submitted that the earlier decisions rendered in 1960 and 1964 in *K. P. Krishnan's case* (supra) and *Bombay Union of Journalists' case* (supra) could not hold good after the amendments of the Industrial Disputes Act introducing Sections 2A and 11A.

8. Mr. Fenn Walter appearing for the contesting respondents in W.A. Nos. 520, 685, 717 and 863 of 1987 adopted the arguments of Mr.

Chandru with regard to cases u/s 2-A of the Act submitted that the Supreme Court had not made any distinction between cases falling within the ambit of Section 2-A and those falling outside the said Section of the Act. According to learned counsel, for the purposes of Section 10(1) and Section 12(5) of the Act, no distinction could be made between disputes raised at the instance of individual workman whose services have been terminated and the other kinds of disputes.

9. Mr. Somayaji appearing for the contesting respondents in W.A. 811 of 1987, while adopting the arguments of Mr. Chandru, put forward an alternative argument that the recent decisions of the Supreme Court are not in any way contrary to the earlier decisions rendered in K. P.

Krishnan's case (supra) and Bombay Union of Journalists' case (supra) and that the principles of law laid down by the Supreme Court have been

the same throughout. It was also submitted by learned counsel that the later decisions of the Supreme Court have only construed and understood

the earlier decisions in a particular manner and they have not ignored them or taken a different view with the result that the later decisions are

binding on this Court. According to learned counsel, the crucial test to be applied while interpreting Section 10(1) of the Act with reference to the

extent of the power of the Government is to consider how far the basic right of a worker or a group of workmen to approach a Court of law to

vindicate their rights is curtailed by the provisions of Section 10 of the Act. Learned counsel also sought to draw succour from the

recommendations made by the International Labour Organisation and contended that the workers should not be deprived of the benefit of an

adjudication by neutral bodies like the Industrial Tribunal or Labour Court.

10. Before advertng to the judgments relied on by both sides, we shall consider the relevant provisions of the Act. The Industrial Disputes Act was

enacted, as its preamble and its long title show, to provide machinery and forum for the investigation of industrial disputes and for the settlement

thereof and for purposes analogous and incidental thereto. Such machinery and forum for adjustment of conflicting interests of the workmen and

employers, without disturbing peace and harmony in the industry, is necessary for assuring the industrial growth which is a prerequisite for a welfare

State. The Act enables the State to compel the parties to resort to industrial

arbitration and for that purpose different forums have been set up for the resolution of such disputes. The Act is intended to be a self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration and failing that compulsory adjudication. The principal objects of the Act are succinctly summed up by S. K. Das, J. in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, as follows :-

- (i) Promotion of measures for securing and preserving amity and good relations between the employer and workmen;
- (ii) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen or workmen and workmen, with a right of representation by registered trade union or a federation of trade unions or an association of employers or a federation of association of employers;
- (iii) prevention of illegal strikes and lockouts;
- (iv) relief to workmen in the matter of lay-off and retrenchment; and
- (v) collective bargaining.

We are concerned here with the machinery established under the Act for adjudicating industrial disputes. When the conciliation machinery prescribed by the Act fails to bring about settlement between the parties, a compulsory adjudication of the dispute is resorted to. It is in respect of the compulsory adjudication that u/s 10 of the Act, the appropriate Government is given a discretion to decide whether or not the dispute between the employer and his employees should be referred to the Board, court or tribunal. Section 10(1) of the Act provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a tribunal or Labour Court for adjudication. The condition precedent for the reference to the Industrial Tribunal or Labour Court is that the appropriate Government must be satisfied that an industrial dispute exists or is apprehended. In cases covered by Section 2-A of the Act, the statute creates a fiction by which any dispute or difference between the workman and his employer connected with, or arising out of his discharge, dismissal, retrenchment or termination of service, shall be deemed to be an industrial dispute. This Section was introduced by Amendment Act XXXV of

1965.

11. The position before the introduction of Section 2-A of the Act was that a dispute between an employer and an individual workman could not

per se be an industrial dispute. But, it could become one if it was taken up by a union or a number of workmen making a common cause with the

aggrieved individual workman. The Section was introduced in order to make the machinery under the act available to cases in which individual

workmen were discharged, dismissed, retrenched or whose services were otherwise terminated. While introducing the Section, the legislature

thought fit to bring in a fiction as referred to above. By virtue of the said fiction, the question of formation of opinion by the Government u/s 10(1)

of the Act that an industrial dispute exists or is apprehended, cannot arise in cases falling u/s 2-A of the Act. However, the language of Section

10(1) of the Act continues to be unaltered even after the introduction of Section 2-A of the Act. Nor the provisions of Section 12(5) of the Act

have been interfered with. A reading of Section 10(1) and Section 12(5) of the Act makes it clear that the appropriate Government has a

discretion to decide whether a reference should be made or not even in cases where an industrial dispute exists or is apprehended.

12. Section 11-A of the Act was inserted by Amendment Act XLV of 1971. The effect of the incorporation of Section 11-A of the Act was

considered at length by the Supreme Court in *The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management* (supra).

While holding that the amendment was not retrospective in operation, the Supreme Court laid down that after the introduction of Section 11-A of

the Act, the power of the Tribunal had enlarged and that even in cases where an enquiry had been held by an employer and a finding of misconduct

arrived at, the Tribunal could differ from that finding in a proper case and hold that no misconduct was proved. It was further held that the Tribunal

may hold in appropriate cases that the proved misconduct does not call for punishment by way of discharge or dismissal and award to the

workman a lesser punishment. The Supreme Court observed that the power to interfere with the punishment and alter the same has been now

conferred on the Tribunal by Section 11-A of the Act. The Supreme Court recognised that the Section has the effect of altering the law by

abridging the rights of the employer in as much as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at

by an employer as well as the punishment imposed by him. What is relevant for our purpose is that even at the time of introduction of Section 11-A

into the Act, the legislature did not think it fit to amend Section 10(1) of the Act or Section 12(5) of the Act.

13. Now we shall consider the terms of Sections 10(1) and 12(5) of the Act. Section 10(1) of the Act to the extent to which it is necessary for our

purpose reads as follows :-

Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,

(a)

(b)

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second

Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the

Second Schedule or the Third Schedule, to a tribunal for adjudication;

Provided that

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall,

unless it considers that the "notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this

sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

Section 12(5) of the Act is in the following terms :-

If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a

Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a

reference it shall record and communicate to the parties concerned its reasons therefor.

The latter provision imposes on the appropriate Government an obligation to

record its reasons for not making reference after receiving a report from the conciliation officer and to communicate the said reasons to the parties concerned. When the Government is obliged to give its reasons in writing for not making reference, that will show that the burden is on the Government to justify its refusal to make reference. When there is no obligation on the part of the Government to give any reason for making reference, but it is compelled to give reasons for not making a reference, it can be seen that the legislature intended the former course to be normal and the latter to be an exception. If the Government it to adopt the latter course, it can do so only for proper reasons. Such reasons have to be relevant and germane.

14. The matter can be approached from another angle also. The legislature in its wisdom prescribed an intermediate stage between failure of conciliation and adjudication of the dispute. That is the stage of reference. The adjudicating machinery cannot be approached straightaway by the parties concerned. The engine of the machinery has to be ignited by the Government by making a reference. The two functions viz., reference and adjudication, are in two independent spheres under the control of different authorities. While the sphere of reference is controlled by the Government, the other sphere is controlled by the Courts and tribunals prescribed by the Act. The Government again while acting within the sphere of reference should not transform it into a sphere of adjudication. The legislature expects the Government to carry out its functions assigned under the Act without in any manner trespassing on the field of adjudication allotted to the Courts and Tribunals. The discretion given in Section 10(1) read with Section 12(5) of the Act has, therefore, to be exercised in such a manner that it would not exceed the limits prescribed for the sphere of reference and enter into the territory of adjudication. What the Government is expected to decide before making a reference is whether on a prima facie examination of the facts of the case, there is a dispute which requires a trial or adjudication by a tribunal or a Court. If there is any matter which requires to be adjudicated, then the Government cannot take upon itself the function of such adjudication and refuse to refer the matter. If on the other hand, the Government comes to the conclusion that the claim made is so patently frivolous or that the admitted facts are so glaringly

against the workmen, which would not warrant a trial or adjudication by a Court or Tribunal, then the Government would be justified in refusing to

make a reference. Similarly, if the claim is stale and belated, it need not be referred for adjudication. There may also be cases where a reference

would not be conducive to industrial peace in the region or would have an adverse impact on the general relation of employer and employee and in

such cases also the Government would be justified in refusing to make a reference.

15. It was considered that after the introduction of Section 11-A in the Act, the appropriate Government should, before refusing to make a

reference, also consider whether the punishment awarded to the workman concerned was justified by the proved misconduct and that a failure to

do so would vitiate the order of the Government. (Vide K. Ramaswamy Vs. Government of Tamil Nadu and Another, . As the provisions of

Section 11-A of the Act have widened the field of adjudication by the Tribunals and Labour Courts, the Government cannot for the purpose of

refusing a reference tread on that field and decide the adequacy or otherwise of the quantum of punishment awarded. In most of the cases the

worker will be questioning the finding of misconduct itself and as a last alternative the quantum of punishment if the finding on merits is to be

accepted. Very rarely will there be a case in which the worker accepts the finding on merits and challenges the quantum of punishment alone. In

such cases, if the Government decides the question of punishment for the purpose of refusing reference, it will be a clear case of adjudication and

the order of the Government will be unsustainable. In no case, therefore, the Government can take the role of an adjudicator and it has to decide

whether to make a reference or not without adjudicating on any part of the dispute.

16. We will now consider the various decisions cited before us in the chronological order. In *The State of Madras v. The Swadesamitran Printers*

Labour Union (supra) a Division Bench of this Court held that the word ""may"" in Section 10(1) of the Act cannot be read as ""shall"" and that merely

because there is an industrial dispute or an apprehension of industrial dispute, it does not necessarily follow that the Government should make

reference. In *The State of Madras v. C. P. Sarathy and another* (supra), the Supreme Court of India held that in making a reference u/s 10(1) of

the Act, the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute

was preliminary step to the discharge of its functions does not make any the less administrative in character. That decision of the Supreme Court

was rendered by a Bench consisting of five Judges. The Court proceeded to hold that it was not necessary for the Government to ascertain full

particulars of the disputes before making a reference and that it was enough if the Government had sufficient knowledge of the nature of the

dispute.

17. In *State of Bihar v. D. N. Ganguly* (supra) the Supreme Court held that the Act does not expressly confer any power on the appropriate

Government to cancel or supersede a reference u/s 10(1) of the Act. While discussing the provisions of the Act, the following observations were

made by the Bench which consisted of three Judges :-

..... Section 12 which deals with the duties of the conciliation officer provides in substance that the conciliation officer should try his best to bring

about settlement between the parties. If no settlement is arrived at, the conciliation officer has to make a report to the appropriate Government, as

provided in sub-s. (4) of Section 12. This report must contain a full statement of the relevant facts and circumstances and the reasons on account

of which in the opinion of the officer the settlement could not be arrived at. Subsection (5) then lays down that if, on a consideration of the report,

the appropriate Government is satisfied that there is a case for reference to a board, labour court, tribunal or national tribunal, it may make such a

reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons

therefor. This provision imposes on the appropriate government an obligation to record its reasons for not making a reference after receiving a

report from the conciliation officer and to communicate the said reason to the parties concerned. It would show that when the efforts of the

conciliation officer fail to settle a dispute, on receipt of the conciliation officer's report by the appropriate government, the government would

normally refer the dispute for adjudication : but if the government is not satisfied that a reference should be made, it is required to communicate its

reasons for its decisions to the parties concerned.

There can be no doubt that the Supreme Court was of the opinion that reference by the Government is the normal rule and refusal thereof is an exception.

18. The matter came to be considered at length in *State of Bombay v. K. P. Krishnan* (supra) by a Bench of five Judges. In that case, the

Government refused to make a reference of a dispute which arose out of certain demands made by the workmen including a claim for bonus. The

reason given by the Government for refusing to make a reference was that the workmen resorted to go slow during the year 1952-53. A single

Judge of the Bombay High Court allowed the writ of mandamus and directed the Government to reconsider the question of making or refusing to

make a reference ignoring the fact that there was a slow down by the workmen and taking into account only such reasons as were germane to the

question of determining whether a reference should or should not be made. That decision was affirmed by a Division Bench of the Bombay High

Court and the matter was taken to the Supreme Court by the State Government. After examining the scheme of the relevant provisions of the Act,

the Court held that the power to make a reference was conferred on the appropriate Government u/s 10(1) of the Act and not u/s 12(5) of the Act

independently of Section 10(1) of the Act. It was further held that it would be open to the Government to consider besides the report made by the

conciliation officer u/s 10(4) of the Act, other relevant facts which may come to its knowledge or which may be brought to its notice and in the light

of the relevant facts which have come to its notice, whether a reference should be made or not. The Court pointed out that the Government must

first consider whether a prima facie case for reference has been made on the merits and if it comes to the conclusion that a prima facie case for

reference has been made, then it would be open to the Government also to consider whether there are any other relevant or material facts which

would justify its refusal to make a reference. After pointing out that there was no dispute between the parties in that case, that if in refusing to make

a reference the Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be

open to challenge in a Court of law, the Court proceeded to consider whether the reason given by the Government in that case for refusing to

make a reference was germane or not. While upholding the conclusion of the High Court that the reason given by the Government was wholly

extraneous, the Supreme Court observed as follows, *State of Bombay Vs. K.P. Krishnan and Others*, :-

.... On the other hand, the High Court has held that the reason given by the Government is wholly extraneous and its refusal to refer the dispute is

plainly punitive in character and as such is based on considerations which are not at all germane to S. 12(5). This Court has always expressed its

disapproval of breaches of law either by the employer or by the employees, and has emphasised that while the employees may be entitled to

agitate for their legitimate claims it would be wholly wrong on their part to take recourse to any action which is prohibited by the standing orders or

statutes or which shows wilful lack of discipline or a concerted spirit of non-cooperation with the employer. Even so the question still remains

whether the bare and bald reason given in the order passed by the appellant can be sustained as being germane or relevant to the issue between

the parties. 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. It may for instance be open to the Government in considering the question of expediency to enquire whether the dispute raises

a claim which is very stale, or which is opposed to the provisions of the Act, or is inconsistent with any agreement between the parties, and if the

Government comes to the conclusion that the dispute suffers from infirmities of this character, it may refuse to make the reference. But even in

dealing with the question as to whether it would be expedient or not to make the reference Government must not act in a punitive spirit but must

consider the question fairly and reasonably and take into account only relevant facts and circumstances. In exercising its power under S. 10(1) it

would not be legitimate for the Government for instance to say that it does not like the appearance, behaviour or manner of the Secretary of the

union, or even that it disapproves of the political affiliation of the union, which has sponsored the dispute. Such considerations would be wholly

extraneous and must be carefully excluded in exercising the wide discretion vested in the Government.

While holding that reference cannot be refused on extraneous grounds, the Supreme Court has indicated some of the relevant and germane grounds on which the Government may refuse to make a reference.

19. The next ruling of the Supreme Court, which is undoubtedly another landmark, is that of a Bench consisting of three Judges in *Bombay Union*

of *Journalists v. State of Bombay* (supra). In that case the services of a member of the staff and a sub-editor in the *Indian National Press, Bombay*

were terminated by notices of retrenchment and the *Bombay Union of Journalists*, which was a trade union, sponsored their cause and after an

attempted conciliation u/s 12 of the Act failed, the State of Bombay refused to refer the dispute to the Tribunal for the following reasons :-

(1) The termination of services of *Shrimati Aruna Mukherji* and *Shri M. T. Thomas* appears to be an act of retrenchment on the part of the

management for which the management is willing to pay all the legal dues to the retrenched persons; and

(2) in effecting the said termination the management does not appear to have acted malafide or vindictively nor practised victimisation for trade

union activities.

The order of the Government was challenged in a writ of mandamus which was dismissed by a single judge of the High Court. A Division Bench of

the High Court confirmed the same. The matter was taken to the Supreme Court by special leave. The first contention urged on behalf of the

appellants was that the Government acted beyond its jurisdiction in proceeding to consider the merits of the dispute while deciding whether the

reference could be made or not. The said contention was rejected by the Supreme Court with the following observations *Bombay Union of*

Journalists and Others Vs. The State of Bombay and Another, :

(6) This argument must be rejected, because when the appropriate Government considers the question as to whether a reference should be made

under S. 12(5), it has to act under S. 10(1) of the Act, and S. 10(1) confers discretion on the appropriate Government either to refer the dispute,

or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an

industrial dispute in respect of which a failure report has been submitted under S. 12(4) the appropriate Government ultimately exercises its power

u/s 10(1), subject to this that S. 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made under S. 12(4). This question has been considered by this Court in the case of the State of Bombay v. K. P. Krishnan, (supra). The decision in that case clearly shows that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider, prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. 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. 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 questions as to whether its power to make reference should be exercised under S. 10(1) read with S. 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. It must, therefore be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under S. 10(1), and so, the argument that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of service of appellants 2 and 3, cannot be accepted.

20. It is no doubt true that the Supreme Court has in the above passage recognised the power of the Government to consider prima facie the merits of the dispute. It has taken care to define the limits expressly by stating that the Government should not purport to decide any question of

law finally; nor should it purport to reach final conclusions on disputed questions of fact. This shows that when the Government refuses to make a reference of the dispute to the tribunal, it shall not decide any disputed questions of fact or disputed questions of law. Any decision of the Government on such a question would become final in the event of its refusal to make a reference. The Supreme Court had also indicated the grounds on which a reference could be rejected in the sentences underlined by us.

21. The main contention urged in that case was that the retrenchment was not in accordance with provisions of the Act in as much as there was a failure on the part of the management to comply with the terms of Section 25F(c) of the Act. That contention was also rejected by the Bench on the ground that the terms of Section 25F(c) were not mandatory and that the notice prescribed therein was not a condition precedent. After laying down expressly the proposition that the provisions prescribed by clause (c) of Section 25F of the Act did not constitute a condition precedent, the Court went on to decide whether a writ of mandamus could be issued to the Government even on the assumption that Section 25F(c) constituted a condition precedent. Their Lordships held that though the breach of Section 25F of the Act was a serious matter, the appropriate Government could still refuse to make a reference if it considered inexpedient to do so. The following are the relevant observations made by the Bench Bombay

Union of Journalists and Others Vs. The State of Bombay and Another, :

.... Can it be said that the appropriate Government is bound to refer an industrial dispute even though one of the points raised in the dispute is in

regard to the contravention of a mandatory provision of the Act ? In our opinion, the answer to this question cannot be in the affirmative. Even if

the employer retrenches the workman contrary to the provisions of S. 25F(c), it does not follow that a dispute resulting from such retrenchment

must necessarily be referred for industrial adjudication. The breach of S. 25F is no doubt a serious matter and normally the appropriate

Government would refer a dispute of this kind for industrial adjudication; but the provisions contained in S. 10(1) read with S. 12(5) clearly show

that even where a breach of S. 25F is alleged, the appropriate Government may have to consider the expediency of making a reference and if after

considering all the relevant facts, the appropriate Government comes to the conclusion that it would be inexpedient to make the reference, it would be competent to it to refuse to make such a reference. We ought to add that when we are discussing this legal position, we are necessarily assuming that the appropriate Government acts honestly and bona fide. If the appropriate Government refuses to make a reference for irrelevant considerations, or on extraneous grounds, or acts mala fide, that, of course, would be another matter; in such a case a party would be entitled to move the High Court for a writ of mandamus.

22. Learned counsel for the appellants placed strong reliance on the above observations and contended that when the Supreme Court had expressed the view that the appropriate Government could refuse to make a reference even in the case of a failure on the part of the management to comply with a mandatory provision of law, that would only mean that the appropriate Government has very wide and absolute discretion in the matter of making or refusing to make a reference and such discretion could not be interfered with by Courts, unless the refusal to make a reference is on extraneous grounds or on irrelevant considerations or vitiated by mala fides. In our opinion, the judgment of the Supreme Court in that case has to be understood in the light of the law as it stood then. It has to be remembered that at that time, Section 2-A of the Act was not in the statute book and individual disputes were not cognizable by the adjudicating authorities under the Act unless they were sponsored by the union or number of other workers. It was also necessary at that time for the Government to decide whether there was an industrial dispute or an apprehension thereof. If in a particular case, the management had failed to comply with a provision of law, though mandatory, with reference to a particular worker, the question would still be whether the dispute raised on behalf of that worker by the union or other workers could be considered to be an industrial dispute and whether it was expedient to refer such a dispute to the tribunal or the Labour Court. It was in that context, the Supreme Court had observed that even in a case of breach of a mandatory provision of law with reference to an individual worker, the Government could still refuse to make a reference, if it had found it to be inexpedient to do so. When the Bench had expressly stated in the earlier part of the

judgment that the Government could not purport to decide finally either a disputed question of law or a disputed question of fact, it could not be understood to say in the abstract in the latter part of the judgment that in every case of a breach of mandatory provision of law, the Government was free to refuse to make a reference. At any rate, it cannot be contended that the Supreme Court decided in that case that the Government was entitled to decide upon the merits of the case while considering the question whether a reference should be made or not.

23. The next decision that was cited before us was rendered in *Hochtief Gammon v. State of Orissa* (supra). By that time Sections 2-A and 11A

were incorporated in the Act. In a dispute relating to bonus, the Government referred to the tribunal the issue whether the workers of Hochtief

Gammon were entitled to bonus and, if so, what should be the quantum. The Supreme Court found in that case that there was a dispute whether

the bonus was payable by the appellant viz., Hochtief Gammon, which was a partnership of a West German Company and an Indian Company, or

by M/s. Hindustan Steel Ltd., which had entered into contract with the appellant for execution of the foundation and civil engineering work of the

Hot and Cold Rolling Mills at Rourkela. The contention of the appellant was that the workmen were really employees of M/s. Hindustan Steel

Limited and that the bonus was payable by them and not by the appellants. The Supreme Court found that it was necessary on the part of the

Government to have considered the question whether M/s. Hindustan Steel Limited Company was to be made a party to the reference and the

question as to who was responsible for the payment of bonus to the workmen should be referred to the Tribunal. While holding that the Labour

Commissioner committed a mistake in not realising that the dispute in that case concerned three parties, and not merely two parties, the Supreme

Court directed the Government of Orissa to reconsider the matter and take a decision in the matter of reference in the light of the relevant facts.

24. In *Prem Kakar v. State of Haryana* (supra) the Supreme Court refused to interfere with an order of the Government of Haryana refusing to

make a reference on the ground that the appellant was not a workman as he was working as an electrical foreman, which was a supervisory job

and was getting more than Rs. 500/- per month as wages and was not covered by the definition of "workman" in the Act. Obviously the reason

given by the Government was found to be relevant and germane.

25. As a contrast, in *Nirmal Singh Vs. State of Punjab and Others*, , the Supreme Court straightaway issued a mandamus directing the Labour

Commissioner, Chandigarh, to make reference under S. 12 of the Act holding that the order of refusal to make reference was wholly unsustainable

as the Labour Commissioner failed to give reasons as to why he came to the conclusion that the appellant was not a workman within the meaning

of the Act. The Supreme Court did not hold that the question whether the concerned person was a workman as defined by the Act was irrelevant

or extraneous for deciding whether a reference should be made u/s 10(1) of the Act or not.

26. In *Workmen of Syndicate Bank, Madras v. Govt. of India* (supra) the Supreme Court while holding that the ground on which the Government

of India had refused to refer the dispute relating to the imposition of punishment of stoppage of three increments on the particular worker, was not

a valid ground, observed in these terms *Workmen of Syndicate Bank, Madras Vs. Government of India and Another*, :

... It would not be right for the Government of India to refuse to make the reference on the ground that the charges of misconduct against the

worker were proved during a duly constituted departmental inquiry and penalty was imposed on the worker after following the required

procedure. If such a ground were permissible it would be the easiest thing for the management to avoid a reference to adjudication and to deprive

the worker of the opportunity of having the dispute referred for adjudication even if the order holding the charges of misconduct proved was

unreasonable or perverse or was actuated by malafides or even if the penalty imposed on the worker was totally disproportionate to the offence

said to have been proved. The management has simply to show that it has held proper inquiry after complying with the request procedure and that

would be enough to defeat the worker's claim for adjudication. Such a situation cannot be countenanced by law.

It has to be noted that the dispute in the above case was not one falling u/s 2-A of the Act.

27. In *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, , demands were raised by the concerned trade union for dearness

allowance and certain other benefits. The State Government while referring the question relating to the wages for a particular period to the tribunal

declined to refer the question relating to the dearness allowance and other benefits. The reason given therefore was :- (1) that the Government was

not in a position to bear the additional burden; and (2) that grant of special allowance would invite similar demands by other employees which

would affect the entire administration. It was contended before the High Court that the State Government had taken upon itself the power to

decide the dispute by giving the above reasons and had usurped the powers of the tribunal. That contention was rejected by the High Court, which

relied upon the observations made by the Supreme Court in *Bombay Union of Journalists*" case (supra). On appeal, the Supreme Court reversed

the decision of the High Court and upheld the contention of the trade union that the Government exceeded its limits and played the role of the

adjudicator. The Supreme Court pointed out that the High Court's understanding of *Bombay Union of Journalists* case (supra) was wrong. After

extracting the relevant observations made in the *Bombay Union of Journalists* case (supra) the Supreme Court states thus *M.P. Irrigation*

Karamchari Sangh Vs. State of M.P. and Another, :

..... Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be

understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. S. 10 permits appropriate

Government to determine whether dispute "exists or is apprehended" and then refer it for adjudication on merits. The demarcated functions are (1)

reference, (2) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes

adjudication and thereby usurpation of the power of a quasi-judicial Tribunal by an administrative authority, namely the appropriate Government.

In our opinion, the reasons Government. In our opinion, the reasons given by the State Government to decline reference are beyond the powers of

the Government under the relevant sections of the Industrial Disputes Act. What the State Government has done in this case is not a prima facie

examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central

Government would cost additional financial burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterised as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand.

The Supreme Court proceeded further to indicate the cases in which the Government could refuse to make a reference in the following words :-

7. There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the

demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand

with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for

adjudication of valid disputes. To allow the Government to do so would be to render S. 10 and S. 12(5) of the Industrial Disputes Act nugatory.

28. Now, we come to the next judgment of the Supreme Court in Ram Avtar v. State of Haryana (supra), which was read and re-read by every

counsel who appeared in this batch of cases. In that case, disputes arose out of the termination of services of the petitioners before the Supreme

Court, on the basis of findings rendered in disciplinary enquiry that they were guilty of misconduct. The Government refused to make a reference

on the grounds that the punishment was imposed after an enquiry was held in accordance with the rules and on the report of the enquiry officer it

was not a fit case for making reference. The Supreme Court framed the question in the following manner Ram Avtar Sharma and Others Vs. State

of Haryana and Another, :-

What are the parameters of power of the appropriate Government u/s 2-A while making or refusing to make a reference to an industrial tribunal

for adjudication of an industrial dispute ?

After holding that while exercising power of making a reference u/s 10(1) of the Act, the appropriate Government performs an administrative act

and not a judicial or quasi-judicial act, the Supreme Court proceeded to state that the Government cannot delve into the merits of the dispute and

take upon itself the determination of lis. The Supreme Court made a reference to its earlier decisions in *State of Bombay v. K. P. Krishnan* (supra)

and *Bombay Union of Journalists v. State of Bombay* (supra) and held that the reasons given by the Government were extraneous and irrelevant as

they would tantamount to adjudication of the dispute. It would be necessary to extract the following passage in the judgment of the Supreme Court

Ram Avtar Sharma and Others Vs. State of Haryana and Another, :

..... The assumption underlying the reasons assigned by the Government is that the enquiry was consisted with the rules and the standing orders,

that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The

last aspect has assumed considerable importance after the introduction of Section 11A in the Industrial Disputes Act by Industrial Disputes

(Amendment) Act, 1971 with effect from December 15, 1971. It confers power on the Tribunal not only to examine the order of discharge or

dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words,

Section 11A confers power on the Tribunal/Labour Court to examine the case of the workmen whose service has been terminated either by

discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The

workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A

bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of

making a reference u/s 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2A of the Act

denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of

enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved.

It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was

commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while

adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference u/s 10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. See *Bombay Union of Journalists v. State of Bombay* (supra). It is equally well-settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision.

29. In *Veerarajan v. Government of Tamil Nadu* (supra) the Supreme Court proclaimed in unambiguous terms that "it is now settled law as a result of the decisions of this Court in *Workmen of Syndicate Bank, Madras v. Govt. of India* (supra) and *Ram Avtar Sharma v. State of Haryana* (supra) that the appropriate Government cannot decline to make reference of an industrial dispute arising out of the termination of the service of a workman on the ground that the domestic inquiry resulting in the termination of the service of the workman was in the opinion of the State Government in conformity with the principles of natural justice and that the punishment imposed on the workman was not disproportionate to the offence with which he was charged". In that case, the dispute related to the dismissal of seven workmen and the order of the Government was upheld by this Court. The Supreme Court set aside the judgment of this Court and directed the Government to reconsider the matter and give its decision within a particular time. The appeal was kept pending till the State Government took a decision. The State Government gave seven reasons and decided that there was no case for adjudication to be referred. The Supreme Court accepted the contention urged on behalf of the workmen and directed the State Government to refer the dispute for adjudication by the Labour Court.

30. Even before the pronouncement of the Supreme Court in *Veerarajan's* case (supra) *V. Ramaswami, J.* of this Court had occasion to deal with

the question in *N. Balakrishnan v. The Government of Tamil Nadu* 1987 W L.R. 156. After referring to the decisions of the Supreme Court in

Bombay Union of Journalists case (supra) *Workmen of Syndicate Bank case* (supra) and *Ram Avtar Sharma's case* (supra), the learned Judge

laid down the proposition as follows :-

..... The normal rule shall be to refer in all cases of dismissal, discharge or termination of service of a workman falling under Sections 2-A and 11-

A of the Act. But in 35 appropriate cases of an exceptional nature, the Government may decline to make a reference. What are these exceptional

cases or circumstances cannot be defined precisely and it will have to depend on the circumstances in each case. The claim made by the worker is

patently frivolous or is highly belated, or the impact of the claim on the general relation between the employer and the employee in the region is

likely to be adverse, or the declining or referring the dispute will put an end to the labour unrest or promote or establish an industrial peace, may be

some of the reasons that may be taken into account while referring or refusing to refer. The reasons generally shall relate to the larger interest of

labour or the establishment of an industrial peace in the region and not on mere merits of the case either on law or facts.

We are entirely in agreement with the above exposition of the law. The same learned Judge was a party to two Division Benches which decided

the cases of *S. Chellaperumal v. The Government of Tamil Nadu* 1987 W.L.R. 202 and *The Workmen of the Coimbatore District Co-operative*

Central Bank Employees' Association v. The Secretary to Government 1987 WLR 326 which approved of the judgment in *Balakrishnan's case*

(supra). As pointed out by V. Ramaswami, J. it is not possible to define precisely the cases in which the Government will be in a position to decline

reference.

31. There is no substance in the contention that the recent decisions of the Supreme Court laid down principles contrary to those settled by the

earlier decision rendered by larger Benches. The passages extracted above would amply bear out that right from 1958 to 1985, the Supreme

Court has been reiterating the same principles circumscribing the discretionary power of the Government u/s 10 of the Act. The recent judgments

do refer to the earlier rulings and rely upon the observations made therein. It is

not a case of a smaller Bench of the Supreme Court overlooking or ignoring the decisions of larger Benches and taking a different view. On the other hand, the later decisions of the Supreme Court declare the law laid down in the earlier cases. The rulings cited by learned counsel for the appellants to the effect that the High Court should follow the judgment of larger Bench of the Supreme Court in preference to that of a smaller Bench do not apply as there is no conflict between the two sets of judgments. We do not also find any distinction between cases falling u/s 2-A of the Act and the other cases in so far as the discretion of the Government to make reference is concerned. The only requirement in cases falling outside Section 2-A of the Act is that the Government should form an opinion that an industrial dispute exists or is apprehended. Otherwise, in the matter of exercise of discretion whether to make reference or not, there is no difference whatever.

32. On a final analysis, the following principles emerge :-

- (1) The Government would normally refer the dispute for adjudication;
- (2) The Government may refuse to make reference, if -
 - (a) the claim is very state;
 - (b) the claim is opposed to the provisions of the Act;
 - (c) the claim is inconsistent with any agreement between the parties;
 - (d) the claim is patently frivolous;
 - (e) the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse;
 - (f) the person concerned is not a workman as defined by the Act;
- (3) The Government should not act on irrelevant and extraneous considerations;
- (4) The Government should act honestly and bona fide;
- (5) The Government should not embark on adjudication of the dispute; and
- (6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate.

33. Applying the principles set out above, Write Appeal Nos. 542, 685, 708, 717, 811, 849, 861, 863, 930, 1428, 1429, 1622, 1623 and 1642

of 1987 are dismissed as in all those cases respective Government orders are

almost stereotyped rejecting reference on the ground that domestic

enquiry was fair and proper and the punishment awarded was appropriate. In fact, no independent argument was advanced in those cases.

34. W.A. No. 255 of 1987 :- The order of the Government impugned in the writ petition out of which this appeal arises, reads thus :-

It is reported that the petitioner Thiru A. T. Jeyadoss was employed in supervisory capacity and was drawing a pay of Rs. 2223.25 p.m. Hence

he is not a "workman" within the meaning of Section 2(s) of the I.D. Act, 1947. Besides, it is seen that the charges against him namely

drunkenness, disorderly and riotous behaviour in the work premises during working hours, threatening co-workers etc. are grave and they have

been held proved in a properly conducted domestic enquiry. Considering the grave nature of the offences, the punishment does not seem to be

disproportionately harsh.

Both before the Labour Officer and this Court in the writ petition, it is the contention of the writ petitioner that though he was designated a

Supervisor by the Management, his duties are such that he falls within the definition of "workman". It is also contended by him that disciplinary

action having been taken against him under the Standing Orders, it is not open to the management to contend that he is not a workman. No doubt,

the management has been taking the stand that he is not a workman as he is employed in a supervisory capacity earning more than Rs. 2000/- p.m.

The question whether the writ petitioner is a workman as defined by the Act has to be decided on the basis of the nature of the duties attached to

his office or the powers vested in him. As the facts are in dispute, the question cannot be decided by the Government. It is a matter for

adjudication by the Labour Court. Hence, the order of the learned Judge setting aside the order of the Government has to be upheld. This writ

appeal fails and is dismissed.

35. Writ Appeal No. 290 of 1987 :- The writ petitioner was employed as a typist in the appellant company. An order of transfer dated 15th June

1984 was issued to him by the Management transferring him from Madras to Kottayam. He challenged the validity of the order by filing a suit O.S.

5911 of 1984 on the file of City Civil Court, Madras and obtained an order of interim injunction. The management preferred C.M.A. 294 of 1984

against the said order. The Principal Judge, City Civil Court, Madras, who heard the appeal, held that the Civil Court had jurisdiction to entertain

the suit and it was not barred by the provisions of the Industrial Disputes Act as contended by the management. However, the learned Judge held

that the plaintiff did not make out a prima facie case to show that the transfer was effected with ulterior motive. In that view, the appeal was

allowed. A revision petition to this Court was dismissed in limine. The writ petitioner filed a petition for Special Leave in the Supreme Court and

the same was dismissed. Thereafter, the writ petitioner withdrew the suit. In the meanwhile, the management initiated disciplinary proceedings

against the writ petitioner for disobedience of the order of transfer, and terminated his services. The petitioner moved the Government for a

reference of the dispute and the Government passed the following order :-

The following charges have been fully proved during enquiry against the petitioner, Mr. S. George Devaram.

1. Not accepting the transfer order dated 15th June 1984 and thus not obeying the order of his authorities in not joining duty.
2. Going on leave without any notice.
3. Not giving correct reasons for the leave taken from 1st January 1985 to 31st January 1985.

The petitioner has also not proved that the Management has dismissed him from service on account of his union activities.

Petitioner having not accepted the Management's transfer order, there is no dispute on his dismissal.

Hence the Government is of the opinion that this Industrial Dispute need not be referred for adjudication.

36. It is submitted by Mr. Chandru appearing for the writ petitioner that he is challenging the validity of the order of transfer itself and that can be

decided only by the Labour Court and the Government erred in proceeding on the assumption that there was a valid order of transfer. Having

regard to the fact that the writ petitioner has already unsuccessfully challenged the validity of the transfer order before the Civil Court, we are of the

opinion that the Government is right in taking the view that there is no dispute on his dismissal. As regards the grounds for termination of service,

there is no dispute on facts. When the facts are not in dispute, there is nothing

which requires a trial or adjudication by the Labour Court or the Industrial Tribunal. The claim on the face of it is frivolous. The Government is, therefore, justified in refusing to make reference. The learned Judge allowed the writ petition on the ground that it is covered by his judgment in *N. Balakrishnan v. The Government of Tamil Nadu* (supra). The learned Judge has not chosen to consider the facts of the case independently. For the reasons stated earlier, the writ appeal has to be allowed and the Writ Petition 7016 of 1986 is dismissed.

37. Writ Appeal No. 292 of 1987 :- The dispute relates to closure of a unit. The writ petitioner and 97 others were working in the House

Furnishing Factory of the Spencer & Company Limited. The management issued a notice dated 18th August, 1984, to all workmen at the House

Furnishing Factory that the House Furnishing Factory of the Company at Madras would be closed with effect from 1st September 1984-88

employees were retrenched and they approached the Commissioner of Labour. After the report of the failure of conciliation, the Government

refused to make reference stating that on a perusal of the Profit and Loss Account, the House Furnishing Factory was incurring loss for a period of

four years and on account of that loss it was closed. The Government has also stated that out of 88 workers retrenched, 84 persons has accepted

the closure and settled their accounts and the remaining four did not have representative capacity. It is admitted before us that it is not factually

correct to say that 84 workers accepted the closure and settled their accounts. It is admitted that the workers had accepted the amounts paid by

the management without prejudice to their rights during the conciliation proceedings. It is however submitted on behalf of the management that the

factum of closure was not in dispute and it is not open to the workers to question the reasons therefor. On the other hand, Mr. Fenn Walter

appearing for the workers submitted that the unit was not actually closed and the company has been issuing advertisement in newspapers calling for

deposits from public and shareholders. It is seen that the facts are not admitted and they are very much in dispute. In any event, the order of the

Government being based on a factual mistake, has been rightly set aside by the learned single Judge. The matter has to be reconsidered by the

Government as directed by the learned Judge. Hence, the writ appeal is

dismissed.

38. Writ Appeal No. 520 of 1987 :- In this case, the order of the Government refusing to make reference was passed on 17th November 1983.

The writ petition was filed in this Court only in November 1986. There is no explanation in the affidavit filed in support of the writ petition for the

inordinate delay in filing the same. Learned counsel for the writ petitioner submitted that after the Government passed the order on 17th November

1983, the petitioner was repeatedly approaching the Government for reconsidering the matter and the last of his applications was dismissed only

on 12th March 1986. We do not think that there was any justification for the delay. The petitioner cannot go on making representations to the

Government for any length of time and ultimately invoke the jurisdiction under Article 226 of the Constitution of India. We are of the opinion that

the writ petition ought not to have been entertained in view of the inordinate delay. The learned single Judge has taken the view that the

representation for reconsideration made by the petitioner to the Government could be taken into account. Even after the rejection of the last of the

representations, the petitioner has not approached this Court for eight months. We do not agree with the reasoning of the learned Judge. We hold

that the petitioner is not entitled to any relief from this Court in exercise of its extra-ordinary jurisdiction. The writ appeal is allowed and the writ

petition stands dismissed.

39. Writ Appeal No. 525 of 1987 :- The Writ petitioner was employed as a production worker in the original CRF Winding Section of Madras

Rubber Factory. When a portion of that Section was closed in 1978, a settlement was entered u/s 12(3) of the Act between the management and

the workers in the presence of the Assistant Commissioner of Labour, by which the workmen in that unit had agreed for transfer of three of them

to the Stocks Department. The writ petitioner was one among the three. It was also agreed that as and when work was resumed in CRF Winding

Section at any subsequent date, the retransfer of those workmen would be discussed with the union and the employment given to them. In May

1979, the petitioner was informed that he was retransferred to the CRF Winding Section and he should report there for duty. The petitioner did

not obey the order of retransfer on the ground that there was no discussion with

the union. After the enquiry, in which the petitioner did not take part, he was dismissed from service. The union raised a dispute as regards his non-employment alongwith other disputes. A settlement was arrived at between the union and the management and some of the demands made the union were dropped, one such demand relating to the non-employment of the writ petitioner. Thereafter, the petitioner filed a petition u/s 2-A of the Act before the Labour Officer for conciliation. The Labour Officer reported failure of conciliation and the Government refused to make reference on the ground that the petitioner was dismissed from service only after a proper enquiry in which the charge of wilful disobedience of the order of management retransferring to CRF Winding Section was held proved and the order of Government was challenged by the writ petitioner in the writ petition and the same was allowed by the learned single Judge stating that it is covered by his judgment in *N. Balakrishnan v. The Government of Tamil Nadu* (supra).

40. It was urged on behalf of the appellant that the union having raised the dispute on behalf of the petitioner as early as in 1980 and dropped the same on account of the settlement with the management, it was not open to the petitioner to raise the same dispute individually thereafter. Learned counsel relies upon the judgment of the Supreme Court in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, wherein it was held that when a dispute concerning an individual workman is taken up by the Union, of which the workman is a member, as a matter affecting workmen in general and on that basis a reference is made under the Act, the individual workman cannot ordinarily claim to be heard independently of the Union. It was also laid down that when an individual workman becomes a party to a dispute under the Act, he is a party not independently of the Union which has espoused his cause and in such a matter, the ordinary rule should be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned. We do not see how the above decision will help the appellant in the present case. That judgment was rendered at a time when Section 2-A of the Act was not in the statute book. It was considered at that time that the scheme of the Act provided a

machinery which could be set in motion to settle only disputes which involved the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of adjudication under the Act, when the same had not been taken up by the Union or a number of workmen. After the introduction of Section 2-A of the Act, any dispute or difference between the workman and his employer relating to his discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute. Just because the Union included in the charter of demands the non-employment of the petitioner and later dropped the same on account of settlement, the petitioner cannot be deprived of his rights under the Act. He is entitled to move the Government u/s 2-A of the Act. We do not find any error in the judgment of the learned single Judge setting aside the order of the Government and directing the Government to reconsider the matter. The appeal fails and is dismissed.

41. Writ Appeal No. 1781 of 1987 :- The dispute in this matter relates to a claim for payment of ex-gratia at the rate of 20% for the year 1979 by the Hindustan Teleprinters General Employees Union, Madras. The Government rejected the reference in the following terms :-

It is reported that the management had already decided to pay the ex-gratia at 8.33% to their workers and that the provisions of the Payment of Bonus Act shall not apply to the establishment.

Hence, the Government consider that there is no case to refer the issue in dispute for adjudication.

The claim of the Union was that in all the prior years excepting 1976, the management was paying 20% of the total wage earnings of a year as ex-

gratia amount. According of the Union, the company was earning considerable profits consecutively for the precious four years. The stand of the

management was that though the provisions of the Payment of Bonus Act were not applicable, they were willing to pay an ex-gratia amount which

they would have been liable to pay if the Payment of Bonus Act was applicable to them. The Government's order approving of the decision of the

management to pay 8.33% ex-gratia would amount to an adjudication of the dispute. The learned single Judge has rightly held that the Government

has exceeded its jurisdiction in doing so. The order allowing the writ petitioner is

unassailable. The writ appeal fails and is dismissed.

42. In the result, Writ Appeals 290 of 1987 and 520 of 1987 are allowed. Writ Appeals 255, 292, 525, 542, 685, 708, 717, 811, 849, 861,

863, 930, 1428, 1429, 1622, 1623, 1642 and 1781 of 1987 are dismissed. The parties will bear their respective costs in all the writ appeals.