
(1973) 10 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 85 of 1972

Sri S.N. Misra

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 31-10-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1974) 40 CLT 173

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : Ajoy Kumar Mohanty, for the Appellant; D.P. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Petitioner has asked for a writ of mandamus to direct the Government of India (Opposite party No. 1) to refer a dispute for adjudication of the Industrial Tribunal as provided u/s 12(5) of the Industrial Disputes Act of 1947 (hereafter called the "Act").

2. The Petitioner was working as a Foreman-B in the Joda West Manganese mines at Bichakundi in Keonjhar district. On 7-5-1971, he was charged for dereliction of duty and a domestic enquiry was undertaken. On 18-6-1971, the Petitioner was ultimately dismissed from service on the finding of the domestic enquiry against him. The Petitioner approached the Labour Enforcement Officer (Central) and ultimately a conciliation proceeding was undertaken. On 10th of August, 1971, the conciliation officer submitted his failure report to the Government of India and on 15-6-1971, the opposite party No. 1 Government refused to make a reference by its order (Annexure-12). The said order is impugned in this proceeding and it is claimed that without justification a reference of the dispute for adjudication to the appropriate Tribunal has been withheld and, therefore, the opposite party No. 1 must be compelled by issue of a writ of a mandamus to refer the dispute.

2. In spite of notice, the opposite parties 1, 3 and 4 who are respectively the Government of India, the Regional Labour Commissioner of the Central Government and the Labour Enforcement Officer (Central), who acted as the Conciliation Officer, have not entered appearance in the case. The opposite party No. 2 who held the domestic enquiry on behalf of the employer has only appeared and filed a counter affidavit.

4. In the impugned order (Annexure-12), the following reason has been provided for not referring the dispute:

...I am directed to say that the Government of India do not consider the dispute fit for reference to an Industrial Tribunal for adjudication because the action of the Management in dismissing Shri S.N. Misra does not appear to be mala fide or unjustified.

Section 12(5) of the Act, as far as relevant, provides:

(5)...Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

The question for consideration in the present case, therefore, is as to whether the reasons provided by the appropriate Government are germane and relevant. In the case of *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, the learned Judges laid down 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 u/s 10(1) of the Act. The Petitioner had alleged mala fides and, therefore, Government rightly negated that contention in examining the merits of the case. Where a serious dispute of fact arises for determination or there is an intricate problem to be adjudicated upon, certainly the Government cannot arrogate to itself the jurisdiction to determine the same finally. The determination of such a question must be left to the appropriate Tribunal. It cannot be said in this case that the Government of India have provided a ground which is not germane or relevant to the question before them or that the opposite party Government has arrogated to itself the jurisdiction to determine the dispute and, therefore, has exceeded its jurisdiction under the statute. The petition must accordingly fail and is dismissed. We make no order as to costs.

K.B. Panda J.

5. I agree.