
(2015) 02 JH CK 0044

In the Jharkhand High Court

Case No : Writ Petition (L) No. 6997 of 2011

Their Workman Union

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 22

Citation : (2015) 02 JH CK 0044

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : P. Modi and Sarvendra Kumar, for the Appellant; Prabhash Kumar, CGC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 19.07.2011, the present writ petition has been filed.

2. The brief facts of the case are that, the concerned workman was working as General Mazdor at Sendra Bansjora Colliery under Sujua area and he was dismissed on 21.01.2004. The petitioner-Union submitted a representation against the illegal dismissal of the concerned workman before the Assistant Labour Commissioner on 09.02.2010. The management submitted its reply and denied employment to the concerned workman. Finally, the conciliation failed and a report dated 25.10.2010 was sent to the Ministry of Labour and Employment however, vide order contained in letter dated 19.07.2011, the appropriate Government refused to refer the dispute for adjudication on the ground that the dispute has been raised belatedly after six years. Aggrieved, the petitioner has approached this Court by filing the present writ petition.

3. A counter-affidavit has been filed on behalf of the management of Gendra Bansjora Colliery, M/s Bharat Coking Coal Limited, supporting the impugned order contained in letter dated 19.07.2011. It is stated that the appropriate

Government has formed an opinion that neither any dispute existed nor it was apprehended six years after dismissal of service. The concerned workman was dismissed on 21.01.2004 and he raised an industrial dispute on 09.02.2010 and no explanation has been offered on behalf of the workman for the said delay. It is stated that in National Engineering Industries Ltd. Vs. State of Rajasthan and Others, and in Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, , the law on this issue has been settled by the Hon"ble Supreme Court and therefore, no interference is required in the matter.

4. Heard the learned counsel appearing for the parties.

5. The learned counsel appearing for the petitioner submits that the date on which a complaint was made to the Assistant Labour Commissioner that is, on 30.07.2010 is not a relevant date for forming an opinion whether there was an unexplained delay on the part of the workman for raising dispute. It was further submitted that the appropriate Government in exercise of its power under Section 10 of the Industrial Dispute Act cannot go into the merits of the matter.

6. Per-contra, Mr. Prabhash Kumar, the learned counsel appearing for the Union of India supports the impugned order dated 19.07.2011 and submits that in view of the decision of the Hon"ble Supreme Court in The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, , the refusal of the appropriate Government to refer the dispute for adjudication is not liable to be interfered with by this Court.

7. Mr. A.K. Mehta, the learned counsel appearing for the respondent-BCCL reiterates the stand taken in the counter-affidavit and supported the stand taken by the learned counsel for the Union of India.

8. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

9. Section 10(1) of the Industrial Disputes Act, 1947 is extracted below:

10. "Reference of disputes to Boards, Courts or Tribunals. - (1) 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) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(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 where the dispute relates to any matter specified in the third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 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:

Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the government to refer the dispute to a Labour court or an Industrial Tribunal, as the case may be, constituted by the State Government."

10. Section 2(K) of the Industrial Disputes Act, 1947 defines "industrial dispute" to mean a dispute or difference between employer and employees or between employer and employers. In "Secretary, Indian Tea Association Vs. Ajit Kumar Barat and Others" (Supra), taking note of decision in Sultan Singh Vs. State of Haryana and another, , the Hon"ble Supreme Court has summarised the law thus,

1. "The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any materials before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.

3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. It is appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus.

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

11. In Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, it has been held that though the appropriate Government can form an

opinion whether industrial dispute exists or is apprehended but it is not entitled to adjudicate the dispute itself on merits. Where the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Industrial Disputes Act, 1947. The Hon"ble Supreme Court has held thus,

13. "Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act." 12. It is not in dispute that the concerned workman was dismissed from service on 21.01.2004 and a dispute was raised before the Assistant Labour Commissioner on 09.02.2010 however, this alone is not sufficient for drawing an inference that there is delay on the part of the concerned workmen in raising the dispute. In the counter-affidavit the respondent-BCCL has not averred that after his dismissal from service on 21.01.2004, the concerned workman neither raised dispute nor submitted any representation. It is well settled that there may be delay of several years still the delay may not be fatal. What is important is to ascertain whether the workman kept the matter alive by submitting representation or by approaching the authorities. The counter-affidavit filed on behalf of the respondent-BCCL is completely silent on the issue. The order contained in letter dated 19.07.2011 also does not indicate any consideration on this aspect and the appropriate Government has declined the matter to refer for adjudication on the ground that there was a delay of more than six years and there is no justification for such delay. From the application dated 02.09.2010 filed on behalf of the concerned workman, it is apparent that the concerned workman represented before the authority for reinstatement in service however, no action was taken by the management. The failure of conciliation report dated 25.10.2010 indicates that a copy of written statement filed by the management, a copy of rejoinder filed on behalf of the concerned workman and Minutes of Conciliation Proceeding dated 20.08.2010 were forwarded to the appropriate Government. In the written statement dated 30.07.2010 in paragraph No. 6, with respect to the statement of the workmen that he represented before the management, it is stated on behalf of the management that it is a matter of record.

13. In view of the above facts and the law settled by the Hon"ble Supreme Court, I am of the opinion that impugned order contained in letter dated 19.07.2011 is liable to be quashed and is hereby quashed. In the result, the writ petition stands allowed. The respondent - Ministry of Labour/Sharam Mantralaya, Government of India is directed to take a decision afresh in the matter.

14. Accordingly, I.A. No. 1349 of 2014 also stands disposed of.