

(1972) 02 MP CK 0010
In the Madhya Pradesh High Court

Vishnu Saday Bhattacharya

APPELLANT

Vs

Manager, Cycle Industries, M.P. Laghu Udyog Nigam and
Others

RESPONDENT

Date of Decision : 11-02-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10A, 12, 25F, 25G

Citation : (1978) ILR (MP) 254 : (1972) JLJ 467 : (1972) 2 LLJ 373 : (1972) 17
MPLJ 541 : (1972) MPLJ 541

Hon'ble Judges : S.M.N. Raina, J;N.C. Dwivedi, J

Bench : Division Bench

Judgement

S.M.N. Raina, J.

This is a petition under Article 226 of the Constitution.

The petitioner was employed as a cycle inspector (cycle parts) by the Director of Industries (Administration) M.P., vide order dated 22-3-58 (Annexure A) in the grade of 85-130. The cycle industry in which he was employed was at that time a Government concern under the Industries Department. Subsequently, the industry was transferred to the Madhya Pradesh Laghu Udyog Nigam Ltd., M.P. on 24-1-64, vide Annexure E1. The non-petitioner No. 1 is the manager of the said Nigam (Corporation) while non-petitioner No. 2 is the Managing Director thereof. The petitioner was promoted to the post of senior inspector on a revised pay scale of Rs. 125-250 on 28-6-68. He was drawing a salary of Rs. 205 plus Rs. 50 as D.A., when he was retrenched by non-petitioners Nos. 1 and 2, vide order dated 28-6-68 by declaring him surplus. The petitioner was offered retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner accepted the compensation under protest and he submitted an application before the Labour Department for conciliation, but as no settlement was arrived at in the conciliation proceedings the conciliation officer submitted a report to the Government under Sub-section

(4) of Section 12 of the Act. The Government, however, declined to make a reference to the Industrial Tribunal, on the ground that the case of the petitioner did not disclose any legal flaw, vide order dated 3-2-69 (Annexure D).

The petitioner then submitted an application for review requesting a reference to the Tribunal, vide Annexures E and F, but the Government did not grant the request. Thereafter, the petitioner submitted a petition u/s 7(1) of the Act to the Labour Court praying that the order of retrenchment be set aside and that the petitioner may be reinstated with full remuneration. This application was opposed by non-petitioners 1 and 2 on the ground that the Labour Court had no jurisdiction to entertain the application. The Labour Court (non petitioner No. 3) held that it had no jurisdiction to hear the petition and accordingly dismissed it by order dated 30-4-70, vide Annexure J. Being aggrieved thereby, the petitioner has filed this petition for quashing the order of the Labour Court and directing it to hear and decide the application according to law. In the alternative, he has prayed that a writ of mandamus may be issued to Government directing it to make a reference of the dispute to the Industrial Tribunal.

The first point for consideration in this case is whether the Labour Court was competent to entertain the application of the petitioner relating to this dispute. Section 7 merely provides for the constitution of such Courts and lays down that it shall be competent to adjudicate any matter specified in the Second Schedule and to perform such other functions as may be assigned to it under the Act. The section does not indicate how a Labour Court would take cognizance of a dispute. This has been laid down in Section 10 and Section 10A of the Act. Section 10 provides for reference of a dispute relating to any matter specified in the Second Schedule to a Labour Court for adjudication. Section 10A provides for a voluntary reference of disputes to arbitration and the Labour Court under an agreement between the employer and the workman. There is no provision under which the employer or employee may directly refer a dispute for adjudication to the Labour Court. It is, therefore, clear that an employer or employee is not entitled to approach the Labour Court directly. Its jurisdiction can be invoked only in the manner provided in the Act. The Labour Court was not competent to entertain the application for adjudication of the dispute in question and it was rightly dismissed by that Court. The petitioner is not, therefore, entitled to any relief in this connection.

The next point for consideration is whether the decision of the Government not to make a reference to the Industrial Tribunal under Sub-section (5) of Section 10 of the Act is proper and justified. Sub-section (5) of Section 12 under which the Government was required to act reads as under:

12(5) 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 therefore.

The basic point for consideration before the Government in exercise of its powers under the aforesaid provision was whether there was a case for reference to the Board, Court or Tribunal. The expression "case for reference" in the aforesaid provision means a dispute relating to any of the matters specified in the Schedule. If no such dispute exists, no question of making a reference would arise. But if the Government finds that there is a dispute relating to any such matters it would be proper for it to make a reference to the appropriate Court or Tribunal for adjudication. It is not for the State Government to decide the dispute itself and it would not be proper for it to decline to make a reference on the ground that the action of the employer which has been challenged by the employee is valid and proper. If the State Government declines to make a reference on any such ground it assumes a jurisdiction which is not vested in it and there is at the same time a failure on its part to exercise the jurisdiction vested in it. Sub-section (5) of Section 12 of the Act requires the Government to state its reasons for not making a reference. This provision has apparently been made in order to provide an objective test which may be subjected to judicial scrutiny.

In *State of Bombay Vs. K.P. Krishnan and Others*, it was held by their Lordships in paragraph 17 that if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane, then the Court can issue and would be justified in issuing a writ of mandamus even though an order under Sub-section (5) of Section 12 is of an administrative nature. This decision was followed by their Lordships in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, . it was held in that case that although it is open to the State Government to go into the merits of the dispute prima facie for the purpose of considering whether it is a fit case for making a reference and This Court cannot sit in appeal against the said order, but if it appears that the reasons for refusing to make a reference are irrelevant or foreign, a writ of mandamus may be issued against the Government.

If the reasons given by the Government for declining to make a reference are extraneous and not germane, there is a failure on the part of the Government to exercise the jurisdiction vested in it under Sub-section (5) of Section 12 of the Act. In such a case, a writ of mandamus can be issued. In the instant case the grievance of the petitioner is that his retrenchment is in contravention of the provisions of Section 25G of the Act, and this is a case of victimization, because he is an active worker of the Cycle Industries Workers Union. He has pointed out in this connection that his juniors have been retained in service in preference to him. It is no doubt true that the full nature of the dispute was not indicated in the original petition, but the petitioner submitted an application for amendment of the petition with a view to give full particulars of the nature of the dispute. We have allowed the application, because it does not appear to be an after-thought inasmuch as the grievance of the petitioner that he was victimized and unlawfully retrenched were stated by him in his application to the Labour Court, vide Annexure G, and also in his application before the conciliation officer, vide

Annexure C 1. The nature of the dispute must also have been indicated in the report of the conciliation officer, which has not been produced by the Government. It is, therefore, clear that the Government was duly apprised of the nature of the dispute. Since the Government declined to make a reference for extraneous and improper reasons this is a fit case in which Government should be directed to take suitable action under Sub-section (5) of Section 12 of the Act.

The petition is, therefore, partly allowed and the State Government is hereby directed to take suitable action in exercise of its powers under Sub-section (5) of Section 12 of the Act. The action taken by it, vide its letter dated 3-2-69 (Annexure D), is hereby quashed. We, however, make no order as to costs in the circumstances of the case. The amount of security deposited by the petitioner shall be refunded to him.