
(1997) 07 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 16448 of 1996

V.P. Jayanarayan

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Citation : (1998) 2 LLJ 1034

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : H.B. Shenoy and Ashok B. Shenoy, for the Appellant; K.V. Raju, Addl. C.G. S.C. For Respondent No. 1 and P.F. Thomas, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner's termination of service was challenged and he raised an industrial dispute u/s 2A of the Industrial Disputes Act, as can be seen from Ext. P1 representation before the Assistant Labour Commissioner (C), Trivandrum. By Ext. P2 management contended that he was appointed for a temporary period and he had worked in the Bank only for 195 days. Therefore provisions of Section 2A (sic.) will not be applicable. Therefore there is no industrial, dispute. The contentions in Ext.P2 were objected to by Ext. P3 letter. After failure of conciliation, failure report was sent. By Ext.P4 his request for reference was rejected stating that the workman has not put in 240 days service. He had appeared in test for regular recruitment but failed to qualify. In effect the contention of the management was accepted on merit and found that petitioner is not entitled to any relief. The Government had gone into merits of the case and passed the order. Section 2(9) of the Industrial Disputes Act defines "industrial disputes" as follows:

"2(k) "industrial dispute" means any dispute or difference between employers and em ployers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Section 2A deals with dismissal or retrenchment of an individual workman and Section 10 deals with reference of the disputes to Boards, Courts or Tribunals. Section 2A reads as follows:

"2-A Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute."

2. In *State of Bombay Vs. K.P. Krishnan and Others*, it was held that Government can consider prima facie merits of the dispute while deciding whether the matter should be referred or not. If the claim made is patently frivolous or is clearly belated, the appropriate Government may refuse to make a reference. Otherwise the Government cannot go into the merits of the dispute. In *Nirmal Singh Vs. State of Punjab and Others*, Supreme Court quashed an order passed by the Government refusing to make a reference in the case of a bank employee as the Government went into merits of the matter. In *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, Supreme Court held that at pp. 522-523 :

"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 Sections 10 and 12(5) of the Industrial Disputes Act nugatory."

3. In *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, Supreme Court held that formation of opinion as to whether an industrial dispute exists or is apprehended is not the same thing as to adjudicate the dispute itself on its merits. In this connection I also refer to the decision of the Supreme Court in *Workmen of Syndicate Bank, Madras Vs. Government of India and Another*, .

4. In the order under reference while refusing reference Government went into merits of the matter. That is a matter for the adjudicating authority to do. Therefore, without expressing any opinion regarding merits of the case I set aside Ext. P4 and direct the first respondent to refer for adjudication to the Industrial Tribunal or Labour Court, the industrial dispute raised by the petitioner regarding legality and justifiability of termination of his service from the second respondent Bank. It is for the Tribunal or Labour Court to adjudicate the claims of the petitioner and management.

The Original Petition is allowed to the above extent. Since the matter is pending for a long time, I direct the first respondent to make a reference as expeditiously as possible and in any event within five months from the date of receipt of a copy of this Judgment.