

A

PREM KAKAR

v.

STATE OF HARYANA AND ANR.

April 5, 1976

B

[A. N. RAY, C.J. AND JASWANT SINGH, J.]

Writ of Mandamus—Whether Rule Nisi can be issued to compel the State to make a reference u/s 10(1) of the Industrial Disputes Act—Art 226 of the Constitution—Industrial Disputes Act, Ss. 10(1) and 12(5)—Scope of.

C

Under section 12(5) read with 10(1) of the Industrial Disputes Act, if on consideration of a failure report u/s 12(4) from the conciliation officer, the appropriate Government is satisfied and is of opinion that there is an industrial dispute and a case for reference, it may make such reference to the labour court.

On considering the "failure report", of the conciliation proceedings in respect of the appellant, an Electrical foreman, the respondent state informed him that his duties being supervisory with wages more than Rs. 500/- his case was not covered by the definition of the terms "workman" under the Industrial Disputes Act and therefore, not a fit case for adjudication. The appellant assailed the said orders under Art. 226, which was dismissed.

D

On appeal by special leave the appellant contended that the question whether an employee is a workman or not was a disputed question of fact and law and, therefore could only be decided by a labour court and on a reference only; but not by the State Government while exercising its powers u/s 12(5).

Dismissing the appeal, the Court

E

HELD : (1) The order of the Government acting under s. 10(1) read with section 12(5) of the Industrial Disputes Act passed after subjective satisfaction is an administrative order and not a judicial or a quasi-judicial one. [1012A]

State of Madras v. C. P. Sarathy, [1953] S.C.R. 334 and *State of Bombay v. K. P. Krishnan & Ors.* [1961] 1 S.C.R. 227 [followed].

F

(ii) In entertaining an application for a writ of *mandamus* against an order made by the appropriate Government under section 10(1) read with s. 12(5) of the Act the court does not sit in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign, then the court may in a given case consider the case for a writ of *mandamus*. [1012-A-C]

Bombay Union of Journalists & Ors. v. The State of Bombay & Anr. [1964] 6 S.C.R. 22 (followed).

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 119 of 1975.

Appeal by Special leave from the Judgment and order dated 15-4-1974 of the Punjab and Haryana High Court in Civil Writ Petition No. 4289 of 1973.

H

N. N. Goswami and Arvind Minocha for the Appellant.

G. B. Pai, S. R. Agarwal, Parveen Kumar and Khaitan & Co. for Respondent No. 2.

The Judgment of the Court was delivered by

RAY, C.J.—This appeal by special leave turns on the question whether the State can be asked by a writ of *mandamus* to make a reference under section 10(1) of the Industrial Disputes Act (hereinafter referred to as the Act).

The appellant was employed by the respondent company Hindustan Dowidat Tools Ltd. The services of the appellant were terminated on 4th September, 1972. The appellant thereafter demanded reinstatement. The Conciliation Officer started conciliation proceedings under section 12 of the Act. No settlement could be arrived at. The Conciliation Officer sent a report to the State Government under section 12(4) of the Act. The State Government by letter dated 7 June, 1973 informed the appellant that the Government had considered the appellant's case not fit for reference to the Labour Court for adjudication.

The Government in the letter stated as follows :

“The Government have not found your case fit for adjudication to a Labour Court because you were working as an Electrical Foreman in this concern, which was a supervisory job and your wages were more than Rs. 500/- per month. Therefore, your case is not covered by the definition of the terms “Workman” given in the Industrial Disputes Act.”

The appellant under Article 226 of the Constitution applied for a writ of *mandamus* directing the State to make a reference. The High Court dismissed the application.

The appellant contended that the question whether the appellant was a workman was a disputed question of fact and law which could be decided only by an appropriate Labour Court. The appellant also submitted that if the dispute in question raises questions of law the appropriate Government should not give a final decision on the question. In short, the appellant's contention is that the issue whether the appellant is a workman or not could only be decided by the Labour Court and, therefore, reference should have been made.

Under Section 10 of the Act where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time refer the dispute, *inter alia*, to a National Tribunal for adjudication.

Section 12 of the Act deals with duties of Conciliation Officers. If the Conciliation Officer cannot arrive at a settlement of the dispute he sends a report to the appropriate Government. Under section 12(5) of the Act 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, 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.

A This Court in *State of Madras v. C. P. Sarathy*⁽¹⁾ and *State of Bombay v. K. P. Krishnan & Ors.*⁽²⁾ held that the order of the Government acting under section 10(1) read with section 12(5) of the Act is an administrative order and not a judicial or a quasi-judicial one.

B In *Bombay Union of Journalists & Ors. v. The State of Bombay and Anr.*⁽³⁾ this Court said that in entertaining an application for a writ of *mandamus* against an order made by the appropriate Government under section 10(1) read with section 12(5) of the Act the Court does not sit in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the Government. If it appears that the reasons given show that the appropriate Government took into account any consideration irrelevant or foreign, then the Court may in a given case consider the case on a writ of *mandamus*.

D In *K. P. Krishnan's* case (supra) the issues in dispute related to a claim of classification for specified employees and additional bonus and the sole ground on which the Government refused to refer the dispute for adjudication under section 12(5) of the Act was that the employees had adopted go-slow tactics during the relevant year. The facts were that the company had nevertheless voluntarily paid three months' bonus for that year and the report of the Conciliation Officer was in favour of the employees. This Court held that the Government acted on irrelevant considerations and issued a writ of *mandamus*.

E In the present case, the fact is that the Government found that the appellant was not a workman within the definition of workman in the Act, and, therefore, it was not a fit case for reference for adjudication.

The High Court rightly rejected the application. The appeal is, therefore, dismissed. Parties will pay and bear their own costs.

S.R.

Appeal dismissed.

(1) [1953] S.C.R. 334.

(2) [1961] 1 S.C.R. 227.

(3) [1964] 6 S.C.R. 22.