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RAM AVTAR SHARMA & ORS. ETC.

v.

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STATE OF HARYANA AND ANR. ETC.

April 11, 1985

[D.A. DESAI AND RANGANATH MISRA, JJ.]

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Constitution of India, Art.32 and 226—Refusal by appropriate Government to refer industrial dispute to Industrial Tribunal/Labour Court u/s. 10, I.D.Act—Function of Government u/s. 10 — Whether administratative or Quasi—Judicial —When a writ of mandamus can be issued.

D

Industrial Disputes Act, 1947, s. 10—Reference—Exercise of power by Govt. to refer an industrial dispute to industrial Tribunal Labour Court—Whether a writ can be issued against refusal of Government to refer the dispute.

Administrative Law—Function of government u/s. 10 I.D. Act to refer a dispute—Whether administrative or quasi-judicial.

E

In all the writ petitions, the petitioners were dismissed from service on the ground of misconduct after an enquiry held against each of them. They raised an industrial dispute contending that the orders imposing punishment of removal were illegal and invalid. The conciliation proceedings also failed. The State Government in W.Ps. Nos. 16226-29 of 1984 and the Central Government in W.P. No. 16418 of 1984 passed identical orders in each case refusing to make a reference to the Tribunal u/s. 10(1) of the Industrial Disputes Act 1947 holding that the punishment was imposed on the petitioners after an enquiry has been held in accordance with the rules and that the removal from service is neither malafide nor unjustified and therefore it was not a fit case for making the reference. Hence these writ petitions.

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Allowing the petions,

HELD : 1.(i) In making a reference u/s. 10(1) the appropriate government performs an administrative act and not a judicial or quasi-judicial act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Assuming that making or refusing to make a reference under Sec. 10(1) is a quasi-judicial function, there is

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bound to be a conflict of jurisdiction if the reference is ultimately made. A quasi-judicial function is to some extent an adjudicatory function in a lis between two contending parties. The Government as an umpire, assuming that it is performing a quasi-judicial function when it proceeds to make a reference, would imply that the quasi-judicial determination of lis *prima facie* shows that one who raised the dispute has established merits of the dispute. The inference necessarily follows from the assumption that the function performed under Sec. 10(1) is a quasi-judicial function. Now by exercising power under Sec. 10, a reference is made to a Tribunal for adjudication and the Tribunal comes to the conclusion that there was no merit in the dispute, *prima facie* a conflict of jurisdiction may emerge. Therefore, the view that while exercising power under sec. 10(1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond the pale of controversy. [692F-H; 693A-C]

State of Madras v. *C.P. Sarathy & Anr.* [1953] S.C.R. 335 at 347 *Western India Match Co. Ltd.* v. *Western India Match Co. Workers Union & Ors.* [1970] 2 SCR 370 *and Sambu Nath Goyal* v. *Bank of Baroda, Jullundur* [1978] 2 SCR 793 *followed.*

(2) Every administrative determination must be based on grounds relevant and germace to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exereise of power it is liable to be questioned in exercise of the power of judicial review. In such a situation the court would be justified in issuing a writ of mandamus even in respect of an administrative order. Maybe, the court may not issue writ of mandamus, directing the Government to make a reference but the court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter.

[693F-H; 694A]

(3) In the instant cases, the workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of making a reference under Sec. 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Sec. 2A of the Act denuded of all its content and meaning. The reasons given by the appropriate. Govenment in each case would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid an that there was sufficient and adequate evidence to hold the charges proved. It would further appear that the appropriate Government in each case was satisfied that the enquiry was not biased against the workmen and the punishment was commensurate with the gravity of the misconduct charged.. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it.

A In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under Sec. 10 are irrelevant,extraneous or not germane to the determination, it is well-settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. Accordingly all the writ petitions are allowed directing the appropriate government in each case to re-
B consider its decision and to exercise power u/s. 10 on relevant and considerations germane to the decision. In other words a clear case for reference uss. 10(1) in each case is made out. [694G-H;695A-D; 695A; 696-AB]

State of Bombay v. *K.P. Krishnan & Ors.* [1971] 1 SCR 227 at 243 and *Bombay Union of Journalists & Ors.* v, *State of Bombay & Anr.*, [1964] 6 SCR 22 selicd upon,

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ORIGINAL JURISDICTION : Writ Petition No. 16226-29 and 16418 of 1984.

Under Article 32 of the Constitution of India.

D *A.K. Goel* for the Petitioners.

Harbans Lal, Ashok Grover, O.P. Sharma, R.N. Poddar and *C.V. Subba Rao* for the Respondents.

E The Judgment of the Court was delivered by

DESAI, J. In this group of writ petitions, the only point of law hanvassed is whether the appropriate Government was justified in declining to make a reference of an industrial dispute arising out of the termination of service of each of the petitioners for adjudi-
F cation to Industrial Tribunal/Labour Court under Sec. 10 of the Industrial Disputes Act, 1947.

Writ Petition Nos. 16256-29/84 : Four petitioners were the workmen employed by the second respondent Hyderabad Asbestos Cement Production Ltd. ('employer' for short). The
G employer on April 11, 1983 issued charge-sheet in identical terms to all the four petitioners calling upon them to show cause within 48 hours of the receipt of the charge-sheet as to why suitable disciplinary action should not be taken against each of them. The charge-sheet referred to an incident that occurred on 11th April, 1983 at 8.15 A.M. between two groups of workers pre-
H sumably owing loyalty to rival unions. The misconduct alleged

against each petitioner was the one set out in Standing Order 20 (XIV) and 20(XXV) of the Certified Standing Orders of the employer. Briefly stated, the charges were that the petitioners were guilty of fighting or riotous or disorderly behaviour as also manhandling beating etc. other workmen of the Company which acts were subversive of the discipline expected of the workmen of the Company. It is alleged that disciplinary enquiry followed and the enquiry officer submitted his report holding each of the petitioners guilty of the misconduct imputed against him. The Assistant Vice-President of the employer Company, after having gone through the report submitted by the enquiry officer and after perusal of the record of proceedings of enquiry and the connected documents concurred with the findings recorded and reported by the enquiry officer holding the petitioners guilty of charges. After taking into consideration various relevant circumstances including the past record of the workmen, each of the petitioners was dismissed from the employment of the employer. It may be mentioned that during the pendency of the enquiry, all the petitioners had been put under suspension and while dismissing the petitioners, the period of suspension was treated as absence without leave. The petitioners raised an industrial dispute as per notice dated May 12, 1984 calling upon the employer to reinstate them with backwages and treat them in service without a break. Copies of the notice were also served upon the authorities in the Labour Department of the Haryana Government. The Labour-cum-Conciliation Officer held conciliation proceedings and submitted a failure report on June 30, 1984. The second respondent, the State of Haryana, after taking into consideration the report of the Concilation Officer, by its order dated September 1, 1984 declined to make a reference on the ground that 'the Goverument does not consider the case to be fit for reference for adjudication to the Tribunal as it has been learnt that the services of the petitioners were terminated only after charges against them were proved in a domestic enquiry.' The present writ petition is filed questioning the correctness and validity of this order.

Writ Petition No. 16418/84 : Petitioner S.K. Sharma was, at the relevant time, employed as Electrical Fitter in the Diesel Shed at Tuglakabad. He was Assistant Secretary of the Uttar Railway Karamchari Union, Diesel Shed Branch. He was also a member of the Canteen Committee. On August 2, 1981 the petitioner went to the Canteen, according to him, in his capacity as the member of

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the Canteen Committee, to enquire about the working of the Canteen. On Shri Gurbachan Singh, a Foreman, marked the petitioner absent from duty and made an entry indicating that the petitioner had absented himself from duty and gave a direction that the petitioner should not be allowed to join duty without his permission.

B On the next day i.e. August 3, 1981, when the petitioner reported for duty, token was not issued to him by the Time Keeper and he was informed that the token could not be issued to him until he brought a slip from Foreman Shri Gurbachan Singh. As the latter was not on duty on that day, petitioner and 10 other workmen who

C too had been marked absent went to the residence of the Foreman Shri Gurbachan Singh and enquired from him why they were not permitted to join duty, Shri Gurbachan Singh declined to have given any direction in this behalf and rebuked the petitioners for coming to his residence and accused them of misbehaviour. The petitioner and several others then approached the General Foreman who intervened and ordered the petitioner and others to join duty.

D Gurbachan Singh thereafter lodged a complaint with the third respondent, Senior Divisional Mechanical Engineer, alleging that the petitioner has misbehaved with him and had attempted to manhandle him. On receipt of this report from Gurbachan Singh, Petitioner was placed under suspension on August 5, 1981, and was

E served with a charge-sheet. The petitioner denied the imputation. A disciplinary enquiry followed. Surprisingly the enquiry officer, Senior Loco Inspector Shri Joginder Lal, did not record the statement of Shri Gurbachan Singh who was the prime witness but examined two other witnesses who claimed to be the neighbourers of Shri Gurbachan Singh. The enquiry officer submitted his report dated

F October 24, 1981 holding the petitioner guilty of mis-conduct. On the basis of the report, 4th respondent exercising powers under Rule 6 of the Raiway Servants (Discipline and Appeal) Rules, 1968 imposed punishment of removal from service on the petitioner. After an unsuccessful appeal to the Divisional Mechanical Engineer, the Uttar Railway Karamchari Union espoused the cause of the petitioner and raised an industrial dispute contending that the order impo-

G sing punishment of removal from service was illegal and invalid. Central Labour Commissioner pursuant to the application from the Union dated may 29, 1982 held conciliation proceedings in which the respondents did not participate. Consequently, a failure report was submitted. The appropriate Government being the Central

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Government as per its order dated Deeember 9, 1983 rejected the request for a reference under Sec. 10 of the Industrial Disputes Act, 1947 on the ground 'that the penalty of removal from service was imposed on the workmen on the basis of enquiry held in accordance with the procedure laid down in the Railway Servants (Discipline and Appeal) Rules, 1968 and that the action of the management in imposing the penalty of removal from service is neither malafide nor unjustified and therefore the appropriate Government does not consider it necessary to refer the dispute to an Industrial Tribunal for adjudication.' It is this order which is challenged in this writ petition.

The neat and narrow question of law raised in these two writ petitions can be formulated thus : whether the appropriate Government in each case was justified in refusing to make a reference on the grounds mentioned in each order more specifically that as the punishment was imposed after an enquiry held in accordance with the rules and on the report of the enquiry officer, it is not a fit case for making the reference. In other words, the question of law is what are the parameters of power of the appropriate Government under Sec. 10 while making or refusing to make a reference to an industrial tribunal for adjudication of an industrial dispute.

The first question to be posed is whether while exercising the power conferred by Sec. 10 to refer an industrial dispute to a Tribunal for adjudication, the appropriate Government is discharging an administrative function or a quasi-judicial function. This is no more *res integra.* In *State of Madras* v. *C.P. Sarathy & Anr.*[1] a Constitution Bench of this Court observed as under :

> "But, it must be remembered that in making a reference under Sec. 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination."

(1) [1953] S.C.R. 334 at 347.

Explaining the ratio of the decision in *Sarathy's case*(1), in *Western India Match Co. Ltd.* v. *Western India Match Co. Workers Union & Ors.*(2) it was observed as under :

> "In the *State of Madras* v. *C.P. Sarathy*(1)' this Court held on construction of s. 10(1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go *into the merits of the dispute its function being only to refer such a dispute for adjudication so that* the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible." (Emphasis supplied)

After referring to the earlier decisions on the subject in *Shambhu Nath Goel* v. *Bank of Baroda, Jullundur*(2) it was held that, in making a reference under Sec. 10(1), the appropriate Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus, there is a considerable body of the judicial opinion that while exercising power of making a reference under Sec. 10(1), the appropriate Government performs an administrative act and not a judicial or quasi-judicial act.

The view that while exercising power under Sec. 10(1), the Government performs administrative function can be supported by an alternative line of reasoning, Assuming that making or refusing to make a reference under Sec. 10(1) is a quasi-judicial function, there is bound to be a conflict of jurisdiction if the reference is ultimately made. A quasi-judicial function is to some extent an adjudicatory function in a lis between two contending parties. The Government as an umpire, assuming that it is performing a quasi-

(1) [1970] 2 S.C.R. 370.

(2) [1978] 25 S.C.R. 793.

judicial function when it proceeds to make a reference, would imply that the quasi-judicial determination of lis prima facie show that one who raised the dispute has established merits of the dispute. The inference necessarily follows from the assumption that the function performed under Sec. 10(1) is a quasi-judicial function. Now by exercising power under Sec. 10, a reference is made to a Tribunal for adjudication and the Tribunal comes to the conclusion that there was no merit in the dispute, *Prima facie* a conflict of jurisdiction may emerge. Therefore the view that while exercising power under Sec. 10(1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond the pale of controversy.

Now if the Government performs an administrative act while either making or refusing to make a reference under Sec. 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Sec. 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. In *State* of *Bombay* v. *K. P. Krishnan and Ors.*[1] it was held that a writ of mandamus would lie against the Government if the order passed by it under Sec. 10(1) is based or induced by reasons as given by the Government are extraneous, irrelevant and not germane to the determination. In Such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. Maybe, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the approriate Government for refusing to make a refernce

[1961] 1 SCR 227 at 243.

come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy.

Accordingly, it is necessary to examine the reasons given by the Government to ascertain whether the determination of the Government was based on relevant considerations or irrelevant, extraneous or considerations not germane to the determination.

Re : *Writ Petition Nos. 16226-29/84* : The reasons assigned by the Government for refusing to make a reference are to be called out from the letter Annexure 'A' dated September 1, 1984 sent by the Joint Secretary, Haryana Government, Labour Department to the petitioners. It is stated in the letter that: "the Govt. does not consider your case to be fit for reference for adjudication, to the Tribunal as it has been learnt that your services were terminated only after charges against you were proved in a domestic enquiry." The assumption underlying the reasons assigned by the Government are that the enquiry was consistent with the rules and the standing orders, that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The last aspect has assumed considerable importance after the introduction of Section 11A in the Industrial Disputes Act by Industrial Disputes (Amendment) Act, 1971 with effect from December 15, 1971. It confers power on the Tribunal not only to examine the order of discharge or dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words, Sec. 11A confers power on the Tribunal/Labour Court to examine the case of the workmen whose service has been terminated either by discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of making a reference under Sec. 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Sec. 2A of

the Act denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appear that the Government was satisfied that the enquiry was not biased against the workmen and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under Sec. 10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. (See *Bombay Union of Journalists & Ors.* v. *The State of Bombay & Anr.*(1) It is equally well-settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. In this case a clear case for grant of writ of mandamus is made out.

Writ Petition No. 16418/84: The appropriate Government being the Central Government in this case declined to make a reference as per its order dated December 9, 1983 in which it is stated that 'the action of the management in imposing on the workmen penalty of removal from service on the basis of an enquiry and in accordance with the procedure laid down in the Railway Servants (Discipline & Appeal) Rules, 1968 is neither malafide nor unjustified. The appropriate Government does not consider it necessary to refer the dispute to the Industrial Tribunal for adjudication.' *Ex facie* it would appear that the Government acted on extraneous and irrelevant considerations and the reasons hereinbefore mentioned will *mutatis mutandis* apply in respect of present order of the Government under challenge. Therefore for the same reasons, a writ of mandamus must be issued.

(1) [1964] 6 S.C.R. 22.

A Accordingly all the writ petitions are allowed and the rule is made absolute in each case. Let a writ of mandamus be issued directing the appropriate Government in each case namely the State of Haryana in the first mentioned group of petitions and the Central Government in the second petition to reconsider its decision and to exercise power under Sec. 10 on relevant and considerations germane to the decision. In other words, a clear case of reference under Sec. 10(1) in each case is made out. We order accordingly.

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Respondent No. 2, Hyderabad Asbestos Cement Products Limited in WP Nos. 16226-29 of 1984 shall pay the costs which is C quantified at Rs. 2,000/- to the petitioners within four weeks from today. There will be no order as to costs in WP No. 16418/84.

D M.L.A. *Petitions allowed.*