SULTAN SINGH

v.

STATE OF HARYANA AND ANR.

DECEMBER 12, 1995

[K. RAMASWAMY AND B.L. HANSARIA JJ.]

Labour Laws :—Industrial Disputes Act, 1947—Sections 10(1) and 12(5)—Workman—Chargesheet termination order—Demand for reinstatement rejected—Application for reference—Refused by the State Government—Second Application—Note by a Minister directing reference—State Government found it unnecessary, to reconsider its earlier order—Hence there is no reference by the State Government.

Appellant was a workman with the Respondents. His services were terminated and his demand for reinstatement was rejected. He made an application for reference under Section 10 of Industrial Disputes Act to the State Government. His first application was rejected. His second application was also rejected by the Government since it did not consider it necessary to reconsider its earlier decision already taken.

Appellant filed a Writ Petition and the High Court dismissed the same holding that before making reference on second application it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference. Hence this appeal.

Disposing of the appeal, the Court

HELD : 1. A conjoint reading of Sections 12(5) and 10(1) of the Industrial Disputes Act is conclusive that on receipt of an application for reference it would be open to the State Government to form an opinion whether any industrial dispute exists or apprehended and then either to make a reference or refuse to make a reference. Only on rejection thereof, the order needs to be communicated to the applicant. [631-D]

2. The order of refusal for reference is only an administrative order and not a quasi-judicial order. Therefore no lis is involved. Hence, there is no need to issue any notice to the employer nor to hear him before

A **making a reference or refusing to make a reference. [631-E-F]**

3. In the instant case, there was no reference ordered by the State Government. It was of the opinion that no industrial dispute existed and it declined to make reference under Section 10(1). The earlier application of the appellant was rejected on the ground of settlement of the matter
B **between the appellant and the respondents. Second application was also rejected in view of the earlier rejection and the Government did not consider it necessary to reconsider its earlier decision, although a Minister made a note directing reference. [632-C-D]**

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9719 of 1995.

From the Judgment and Order dated 6.8.84 of the Punjab & Haryana High Court in W.P. No. 2285 of 1984.

D R.C. Kaushik for the Appellants.

I.S. Goyal and Ms. Indu Malhotra for the Respondents.

The following Order of the Court was delivered :

E Two questions arise in this appeal, namely, (1) whether the State should hear the respondent/employer before making a reference on a second representation under Section 10 of Industrial Disputes Act, 1947 (for short, 'the Act') since it was rejected on an earlier occasion; and (2) whether there is an order of reference by the State Government so as to entitle the appellant to have the dispute adjudicated by the tribunal.

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The facts are not in dispute. Way back in 1955, the appellant had joined respondents as a workmen (Khalasi). He was promoted on September 6, 1972 as a tape-reader. He was served with a charge- sheet on June 28, 1979 and his services were terminated on August 9, 1979. On June 30, 1981, he made a demand on the respondent/employer for reinstatement
G which was rejected. Thereafter, he made an application for reference under Section 10 of the Act to the State Government which was rejected by order dated October 20, 1981. The appellant again made a representation on March 25, 1982 and the Minister made a note on the representation directing to make a reference. However, since no communication was
H received by the appellant, he wrote a letter to the Labour Commissioner,

Haryana, on April 26, 1984 but to no avail. He then filed the writ petition. By order dated August 6, 1984 in CWP No. 2885/84, the High Court dismissed the writ petition. A

The first question is whether the State should give a hearing to the employer before making a reference on second application, since on an earlier occasion, it was rejected. Section 10(1) of the Act provides that where an appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing refer the dispute to named authorities. Section 12(5) of the Act postulates that on receipt and consideration of a report from the conciliation officer, if the Government is satisfied that there is a case for reference to the Board, Labour Court, Tribunal or National Tribunal, as the case may be, it may make such reference. Where the appropriate Government does not make such a reference it shall record reasons therefor and communicate to the parties concerned. B C

A conjoint reading, therefore, would yield to the conclusion that on making an application for reference, it would be open to the State Government to form an opinion whether industrial dispute exists or apprehended and then either to make a reference to the appropriate authorities or refuse to make the reference. Only on rejection thereof, the order needs to be communicated to the applicant. Nonetheless the order is only an administrative order and not a quasi-judicial order. When it rejects, it records reasons as indicated in sub-section (5) of Section 12 of the Act. The appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on record. Being an administrative order no lis is involved. Thereby there is no need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference. Sub-section (5) of Section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference under Section 10(1). It enjoins to record reasons only when it refuses to make a reference. D E F G

The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative order and so is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to H

A the employer nor to consider his objections nor to hear him before making a reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on second application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference. The previous decision of that Court relied on in the case at hand was wrongly decided.

The second question is whether, as a fact, reference has been ordered by the Government. It is seen that on the earlier occasion admittedly reference was rejected on the ground that the appellant had settled the matter with the employer. In the second application, the Minister made a note directing reference, but in the order communicated later to the appellant by the Labour Department, it was indicated that in view of the decision already taken, the Government did not consider it necessary to reconsider the decision already taken. In other words, they were of the opinion that there existed no industrial dispute. They declined to make reference under Section 10(1). Therefore, there is no reference, in fact, made to the appropriate Tribunal/Labour Court or Industrial Tribunal.

In these circumstances, we cannot give relief to the appellant, since there is no reference made by the Government. The appeal is disposed of accordingly. No costs.

M.K. Appeal disposed of.