Before Hon'ble R. P. Sethi & N. K. Sodhi, JJ.

SUKHRAM,—*Petitioner.*

versus

THE LABOUR COMMISSIONER, PUNJAB AND ANOTHER,
—*Respondents.*

C.W.P. No. 7976 *of* 1995

30th August, 1995

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 10—Reference—Government declining to make reference—While refusing to make reference Government not expected to be influenced by reasons wholly extraneous or irrelevant—In case Government fails to make reference on such grounds, Courts to interfere in writ jurisdiction—Duty performed by Government in making a reference or in refusing to make one cannot be regarded as a decision'.

Held, that the Government in exercise of its powers under Section 10(1) (c) of the Act has no right to take upon itself the duty of adjudicating the dispute sought to be referred to the Court or Tribunal. The limited power exercisable by the Government is to make a reference and not to adjudicate on the dispute sought to be referred for adjudication.

(Para 6)

Further held, that the consideration of the Government to ascertain as to whether there is a *prima facie* case for reference cannot be stretched to the extent of adjudication of the merits of the case. Once the Government comes to the conclusion that there is a *prima facie* case it is under a legal obligation to refer the dispute. In 'Government of Madras *v.* S.I.S.S.W.P. Secy. AIR 1964 Mad. 469, a Division Bench of the Madras High Court considered the scope of Sections 10 and 12 of the Act and held that the duty performed by the Government in making a reference or in refusing to make a reference of an industrial dispute for adjudication, can in no way be regarded as 'decision' if that word is to be taken as an idea of judicial adjudication.

(Para 8)

Further held, that while refusing to make a reference the Government is expected not to be influenced by the reasons which are wholly extraneous or irrelevant or admittedly within the scope and jurisdiction of the Labour Court/Tribunal. In any case, where the Government feels to make a reference upon such type of extraneous considerations, this Court in exercise of writ jurisdiction would

interfere and issue appropriate directions to the Government for re-consideration of the question of making or refusing to make a reference to the Labour Court/Tribunal.

(Para 9)

Mrs. Sahina, Advocate, *for the Petitioner.*

M. L. Saggar, Advocate with B. P. S. Nehal, Advocate, *for the Respondent.*

JUDGMENT

R. P. Sethi, J.

(1) This judgment of ours shall dispose of bunch of Civil Writ Petition bearing C.W.P. Nos. 7976 to 8003 of 1995 as the similar facts and common question of law is involved in these petitions. For the purposes of this judgment, the facts have been taken from C.W.P. No. 7976 of 1995.

(2) The demand of the petitioners for making reference of the industrial dispute to the Labour Court was rejected by respondent No. 1 allegedly on the ground of pendency of C.W.P. No. 14277 of 1993. It is submitted that in the aforesaid writ petition the order under challenge is under the payment of Wages Act and has nothing to do with the Industrial Dispute raised by the petitioners and sought to be referred to the Labour Court.

(3) The learned counsel for the respondents have not been in a position to justify the action of respondent No. 1 in declining to make reference to the Labour Court. It is, however, submitted that upon representation made by the petitioners, a detailed order has been passed by respondent No. 1 which if perused and accepted would entail the dismissal of the writ petition.

(4) It is now well established that while deciding to make or decline to make a reference, the Government cannot take any decision effecting the merits of the industrial dispute sought to be raised. The Government should not reach final decision of question of law and the disputed questions of facts as the same is within the domain and jurisdiction of the Court or the Industrial Tribunal.

(5) The Supreme Court in *Bombay Union of Journalists* v. *State of Bombay* (1), considered the scope of Section 10 read with section

(1) A.I.R. 1964 S.C. 1617.

12 of the Industrial Disputes Act, 1947 (for short the 'Act') and held :—

> "It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal."

The Supreme Court further held that the Government was not precluded from considering even *prima facie* the merits of the dispute and if it found the claim to be patently frivolous or clearly belated or barred under any Statute, it may refuse to make the reference.

(6) The Government in exercise of its powers under Section 10(1)(c) of the Act has no right to take upon itself the duty of adjudicating the dispute sought to be referred to the Court or Tribunal. The limited power exercisable by the Government is to make a reference and not to adjudicate on the dispute sought to be referred for adjudication. Reference may be declined on the limited grounds as noted herein above which admittedly does not include the judgment of the Government on the dispute itself. The Government cannot be permitted to assume the jurisdiction conferred upon the Industrial Tribunal or the Court and is required to be restricted to the extent indicated herein above.

(7) In its later judgment, the Supreme Court in *The M.P. Irrigation Karamchari Sangh* v. *State of M. P.* (2), the Supreme Court held that the Government should be very slow to attempt an examination of the demand with a view to decline to make reference. In that case, it was held :—

> "While conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate

(2) 1985 (1) S.L.R. 611.

Government to determine whether dispute 'exists is apprehended' and then refer it for adjudication on merits. The demaracted functions and (1) reference, (2) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden. it constitutes adjudication and thereby usurpation of the power of a *quasi* judicial Tribunal by an administrative authority namely the appropriate Government. In our opinion, the reasons given by the State Government to decline reference are beyond the powers of the Government under the relevant sections of the Industrial Disputes Act. What the State Government has done in this case is not a *prima facie* examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central Government would cost additional financial burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterised as either preverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand."

(8) The consideration of the Government to ascertain as to whether there is a *prima facie* case for reference cannot be stretched to the extent of adjudication of the merits of the case. Once the Government comes to the conclusion that there is *prima facie* case it is under a legal obligation to refer the dispute. *In 'Government of Madras* v. *S.I.S.S. W.P. Socy.* (3), a Division Bench of the Madras High Court considered the scope of Section 10 and 12 of the Act and held that the duty performed by the Government in making a reference or in refusing to make a reference of an industrial dispute for adjudication, can in no way be regarded as 'decision' if that word is to be taken as an idea of judicial adjudication.

(9) It has been submitted by the learned counsel for the respondents that as the impugned order was based upon failure of conciliation proceedings, the action of the Government purported to have been taken under Section 12 of the Act cannot be challenged

(3) A.I.R. 1964 Mad. 469.

by the petitioners. The Supreme Court in *'State of Bombay* v. *K. P. Krishnan* (4), considered this aspect of the matter and held, "that even if the appropriate Government may be acting under Section 12(5), the reference must ultimately be made under Section 10(1). Section 12(5) by itself and independently of Section 10(1) does not confer power on the appropriate Government to make a reference." While refusing to make a reference the Government is expected not to be influenced by the reasons which are wholly extraneous or irrelevant or admittedly within the scope and jurisdiction of the Labour Court/Tribunal. In any case, where the Government feels to make a reference upon such type of extraneous considerations, this Court in exercise of writ jurisdiction would interefere and issue appropriate directions to the Government for reconsideration of the question of making or refusing to make a reference to the Labour Court/Tribunal."

(10) Where the specific plea is raised by the workman with respect to his service conditions or the alleged illegal act of the respondents which is specifically denied and the plea raised by the workman is found to be not frivolous no option is left for the Government except to make a reference. Act does not contemplate the refusal of reference of a dispute on the basis of the opinion of the Government regarding the truth of the acquiescence.

(11) In the instant case, the respondents have declined to make a reference on frivolous ground of pendency of C.W.P. No. 14277 of 1993 which admittedly do not pertain to the industrial dispute sought to be referred to the Labour Court/Tribunal. The action of the respondents in declining to make a reference is arbitrary and contrary to the settled position of law. The services of the petitioner have been terminated by the respondent-employer and the action was alleged to be against the provisions of the Industrial law. The refusal to make a reference was on a frivolous ground which clearly showed non-application of mind by the respondent-authorities. The respondents were, therefore, not justified in rejecting the representation of the petitioners.—*vide* Annexure P/2 or Annexure R/2/1.

(12) Under the circumstances, the writ petitions are allowed by setting aside the impugned order by which the respondents declined to make a reference of the dispute raised by the petitioners. It is

(4) A.I.R. 1960 S.C. 1223.

true that another opportunity should be allowed to the respondents directing them to reconsider the matter for making a reference to the Labour Court but in the facts and circumstances of the case, we feel it appropriate to issue directions to the respondents for making a reference of the disputes raised by the petitioners. On account of the acts of commission and omission attributable to the respondents the petitioners have been unnecessarily dragged into the litigation and despite termination of their services with effect from 3rd September, 1992, the dispute raised by them has not been referred to the Labour Court. A command is, therefore, issued to the respondent-authorities for making of references to the Labour Court with respect to the dispute raised by the petitioners regarding termination of their services. The orders for making references to the Labour Court be passed positively within a period of one month from today.

J.S.T.

Before Hon'ble Ashok Bhan & P. K. Jain, JJ.

DHARAM PAL & ANOTHER,—*Petitioners.*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 3882 of 1994.

5th September, 1995.

Constitution of India, 1950—Art. 226/227—Regularisation—Annual Confidential Report assessed petitioners to be lazy and below average—Petitioners seeking regularisation of their services in terms of policy framed—Regularisation of services of only those employees who were assessed in overall good category—Petitioners cannot claim good reports during service—Even appeal filed against A.C.R. dismissed—Petitioners case does not fall within paramaters fixed by Institutions—Services rightly terminated in terms of letter of appointment.

Held, that the validity of instructions has not been challenged in the writ petition. As per these instructions, the services of only those employees could be regularised who were assessed to be in the overall good category and against whom no disciplinary proceedings were pending. Since the petitioners did not fall in the overall good category, their services could not be regularised as per