stand is supported by the decisions in *Ajayab Singh and another* v. *The State of Rajasthan* (11), *Harjiram and others* v. *The State of Rajasthan* (12), *and Chauthmal and others* v. *State of Rajasthan* (13). A contrary view has, however, been taken in *Sheoram Singh and others* v. *State of Rajasthan* (14).

12. From the above, it is evident that there is some conflict of judicial opinion on this point. However, in view of the fact that I have rested myself primarily on the provisions of sections 227 and 228 of the Code it is wholly unnecessary to be drawn into this controversy under section 319 of the Code. I would, therefore, refrain from expressing any opinion on this specific point.

13. To conclude it is held that a Court of Session, without itself recording evidence, can summon an additional accused to stand trial along with others already committed to it on the basis of the documents in the final report of the Investigating Officer under section 173, in view of the provisions of sections 227 and 228 of the Code.

14. The significant common question having been answered as above, all the four cases will now go back for a decision on merit before the respective Benches.

S. S. Kang, J.—I agree.

N.K.S.

FULL BENCH

Before P. C. Jain, Acting C.J., S. P. Goyal & G. C. Mital, JJ.

MANOHAR LAL,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 2903 *of* 1982.

May 26, 1983.

Constitution of India 1950—*Article* 226—*Industrial Disputes Act* (*XIV of* 1947)—*Section* 10(1)—*Services of a workman terminated*—*Workman*

(11) (1978) 28 I.L.R. Raj. 14.
(12) (1979) 29 I.L.R. Raj. 662.
(13) 1982 Cr. L.J. 1403.
(14) 1982 Cr. L.R. Raj. 637.

not seeking reference under section 10 but filing a writ petition challenging his termination—Claim for a reference under section 10—Whether an alternative remedy for purposes of Article 226—Writ petition—Whether ordinarily barred.

Held, that a reference of an industrial dispute for adjudication in exercise of the powers of the Government under section 10(1) of the industrial Disputes Act, 1947 is so common that it is difficult to call the remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. A person wishing the enjoyment of the right and obligations created under the Act and wanting its enforcement must rest content to secure the remedy provided by the Act and that the possibility that the Government may not ultimately refer an industrial dispute under section 10 on the ground of expediency is not a relevant consideration in this regard. If the Government does not choose to refer the dispute to any one of the authorities, it is obligatory on the Government to record its reasons for that and communicate the same to the parties as required under section 12(5) of the Act. An aggrieved party then is entitled to approach the High Court and show that the action of the Government in declining the reference is not legally sustainable. A little scrutiny of the provisions of the Act makes it abundently clear that through the intervention of the appropriate Government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. It is, therefore, held that the mode of redress provided to a workman by claiming a reference under section 10 of the Act is a proper, efficacious alternative remedy which ordinarily would be a bar to the filing of a writ petition.

(Paras 4, 5 & 7).

Rajbir Singh and others *vs.* State of Haryana and others, 1983(1) S.L.R. 38. *Overruled.*

Malkhan Singh *vs.* Union of India and others, 1981(2) L.L.J. 174.

Mahabir *vs.* Shri D. K. Mital and others, 1979(3) S.L.R. 497.

Tapan Kumar Jana *vs.* General Manager, Calcutta Telephones and others, 1981(1) S.L.R. 292.

Assistant Personnel Officer, Southern Railway, Olayakhot and K. T. Antony 1978(2) L.L.J. 254.

Daryodhan Naik and others *vs.* Union of India and others, 1969 L.I.C. 1282. *Dissented From.*

(*Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice S. S. Sodhi to a Larger Bench on 18th November, 1982 for decision of an important question of law involved in*

this case. The Larger Bench consisting of the Hon'ble the Acting Chief Justice Mr. P. C. Jain, Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice G. C. Mital finally decided the case on 26th May, 1983).

Wrti Petition under Article 226/227 of the Constitution of India, praying that this Hon'ble Court be pleased :—

(a) *to issue a writ of* certiorari *quashing termination order P/1;*

(b) *to issue a writ of* mandamus *directing the respondents to reinstate the petitioner with full back wages and other consequential reliefs; or*

(c) *to issue any other appropriate Writ, Order or Direction deemed fit in the circumstances and on the facts of the case; and*

(d) *to award the costs of this petition to the petitioner.*

K. S. Kundu, Advocate with R. S. Takoria, Advocate, *for the Petitioner.*

A. S. Sandhu, Additional A. G. (Punjab), *for the Respondents.*

JUDGMENT

Prem Chand Jain, J.

1. The petitioner, a Pump Operator, was working on purely temporary basis. His services were terminated by the Sectional Officer, Incharge,—*vide* his letter dated 29th September, 1981, with effect from 30th September, 1981. The petitioner has challenged the legality of the said order. The petition came up for motion hearing on 20th July, 1982. On the basis of the judgment of the Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa and others,* (1), notice of motion was issued by the Bench. In response to that notice the respondents put in appearance and filed written statement, in which the material allegations made in the petition have been controverted. At the time of final motion hearing, one of the points that arose for consideration was that the present petition was not maintainable as the petitioner should have first availed of the alternate remedy under the Act by claiming a reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The stand taken by the learned counsel for the petitioner was that remedy under the Act was neither adequate nor speedy nor efficacious and that the petition deserved to be decided on merits by

(1) AIR 1978 S.C. 548.

this Court in exercise of its powers under Article 226 of the Constitution. In support of his contention, the learned counsel for the petitioner, had relied on a judgment of this Court in *Rajbir Singh and others* v. *State of Haryana and others* (2), wherein, on this aspect of the matter, it has been observed, thus :—

> "As regards the first preliminary objection, it may be observed that petitioners could not have claimed reference of their dispute under section 10 of the Act as a matter of right and, therefore, provisions of Section 10 cannot be considered to be providing an alternative remedy of the kind which may be considered as bar to the maintainability of the writ petition. The aforesaid view had already found favour with Delhi High Court in *Malkhan Singh* v. *Union of India* (3)."

2. The Bench, on consideration of the entire matter, found itself unable to subscribe to the aforesaid view. Consequently, the petition was admitted and ordered to be heard by a larger Bench. That is how we are seized of the matter.

The short question that falls for our consideration may be formulated thus :—

> "Whether the mode of redress provided to a workman by claiming a reference under Section 10 of the Act, can be regarded as an alternative remedy so as to ordinarily bar the filing of a writ petition."

What was contended by Mr. Kundu, learned counsel for the petitioner, was that a workman could not claim reference under Section 10 of the Act as a matter of right, and, therefore, the provisions of Section 10 could not be considered to be providing an alternative remedy, which might be considered as a bar to the maintainability of a writ petition. In support of his contention, the learned counsel had relied on the following judgments, besides the Division Bench judgment in *Rajbir Singh's case* (supra); *Malkhan Singh and Union of India and others* (supra), *Mahabir* v. *Shri D. K. Mital and others* (4), *Tapan Kumar Jena* v. *General Manager,*

(2) 1983 (1) S.L.R. 38.
(3) 1981 II LL.J. 174.
(4) 1979(3) S.L.R. 497.

Calcutta Telephones and others (5) between *Asstt. Personnel Officer, Southern Railway, Olavakhot* and *K.T. Antony* (6) and *Duryodhan Naik and others* v. *Union of India and others* (7).

3. I have given my thoughtful consideration to the entire matters and find myself unable to agree with the contention of the learned counsel. It may be observed at the outset that I find that the question posed for our decision stands fully answered by the judgment of the Supreme Court in *Premier Automobiles Ltd.* v. *Kamlakar Shantaram Wadke and others* (8) against the petitioner, and it would not only be futile but wasteful to examine the matter independently in depth. In the *Premier Automobiles' case* (supra) precisely a similar contention had been raised and dealt with, as would presently be shown. What had been contended before the Supreme Court was that the remedy provided under the Act was no remedy in the eye of law. It was a misnomer. Reference to the Labour Court or an Industrial Tribunal for adjudication of the Industrial dispute was dependent upon the exercise of the power of the Government under Section 10(1). It did not confer any right on the suitor.

4. While dealing with the aforesaid contention, their Lordships of the Supreme Court in para 14 of the report at page 2246, observed thus:—

> "We do not find much force in either of the contentions. It is no doubt true that the remedy provided under the Act under Section 33C, on the facts and in the circumstances of this case involving disputes in relation to the two settlements arrived at between the management and the workmen, was not the appropriate remedy. It is also true that it was not open to the workmen concerned to opproach the Labour Court or the Tribunal directly for adjudication of the dispute. It is further well established on the authorities of this Court that the Government under certain circumstances even

(5) 1981 (1) SLR 292.

(6) 1978 (2) L.L.J. 254.

(7) 1969 L.I.C. 1282.

(8) AIR 1975 S.C. 2238.

on the ground of expediency [vide *State of Bombay* v. *K. P. Krishnan* (9)] *and Bombay Union of Journalists* v. *The State of Bombay* (10), can refuse to make a reference. If the refusal is not sustainable in law, appropriate directions can be issued by the High Court in exercise of its writ jurisdiction. But it does not follow from all this that the remedy provided under the Act is a misnomer. Reference of industrial disputes for adjudication in exercise of the power of the Government under Section 10(1) is so common that it is difficult to call the remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. The remedy suffers from some handicap but is well compensated on the making of the reference by the wide powers of the Labour Court or the Tribunal. The handicap leads only to this conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is not exclusive. It is alternative. But surely for the enforcement of a right or an obligation under the Act the remedy provided uno flatu in it is the exclusive remedy. The legislature in its wisdom did not think it fit and proper to provide a very easy and smooth remedy for enforcement of the rights and obligations created under the Act. Persons wishing the enjoyment of such rights and wanting its enforcement must rest content to secure the remedy provided by the Act. The possibility that the Government may not ultimately refer an industrial dispute under Section 10 on the ground of expediency is not a relevant consideration in this regard."

An analysis of the aforesaid observations would show that their Lordships have clearly held that the reference of an industrial dispute for adjudication in exercise of the powers of the Government under Section 10(1) is so common that it is difficult to call the *remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act* (emphasis supplied). It has also been specifically held that the person wishing the enjoyment of the right and obligations created

(9) (1961) 1 SCR 227.

(10) (1964) 6 S.C.R. 22.

under the Act and wanting its enforcement *must rest content to secure the remedy provided by the Act and that the possibility that the Government may not ultimately refer an industrial dispute under Section 10 on the ground of expediency is not a relevant consideration in this regard* (emphasis supplied). In the wake of these definite conclusions of the Supreme Court, it would be very difficult to subscribe to the view that the mode of redress provided to a workman by claiming a reference under Section 10(1) of the Act, cannot be regarded as an alternate remedy.

5. Mr. Kundu, learned counsel for the petitioner, sought to distinguish the decision of the Supreme Court by contending that the aforesaid observations have no relevancy to the question posed before us, inasmuch as in that case the issue to be decided was as to in which type of cases relating to industrial disputes, the Civil Court would have jurisdiction. According to the learned counsel, the observations reproduced above, would have no relevance with regard to the exercise of the jurisdiction of the High Court under Article 226 of the Constitution of India, which was much wider. The learned counsel had also submitted that it was only with regard to the provisions of Section 33-C of the Act that the question relating to the alternate remedy was being decided in the *Premier Automobiles' case* (supra) and that in respect of Section 10 of the Act, that judgment would have no bearing. Again, I find myself unable to agree with the approach adopted by the learned counsel. Merely this fact that the question that fell in for determination in *Premier Automobiles' case* (supra) concerned the Civil Court's jurisdiction in relation to industrial disputes would make least difference in determining the relevancy and applicability of the observations of their Lordships of the Supreme Court reproduced above while deciding the question posed before us. As is evident, the question is not as to what is the scope of jurisdiction of this Court under Article 226 of the Constitution of India but the question is whether claiming a reference under Section 10 of the Act can be regarded as an alternate remedy or not. There can be no gainsaying that for the redress of the grievance, an aggrieved person is entitled to claim a reference under the Act, meaning thereby that it is certainly a remedy available to him under the Act. That being so, I fail to understand as to how will it cease to be a remedy simply because the matter of reference depends upon the opinion of the Government. Further, it would not be correct to say that the remedy cannot be asked for as a matter of right under Section 10 of the Act because where any industrial dispute exists or is

apprehended, a reference can be claimed by the aggrieved person on showing relevant facts in that respect and on consideration of the entire material if it is found that an industrial dispute exists or is apprehended and that it is expedient to refer a dispute for adjudication, the appropriate Govt. is bound to refer the dispute for adjudication. In case a contrary opinion is formed, the reference may be declined. While declining the reference the Government is required to apply its mind and act reasonably and not capriciously or arbitrarily nor according to whims or fancies. It would be pertinent to observe that if the Government does not choose to refer the dispute to any one of the authorities, it is obligatory on the Government to record its reasons for that and communicate the same to the parties as required under Section 12(5) of the Act. An aggrieved party then is entitled to approach this Court and show that the action of the Government in declining the reference is not legally sustainable. A little scrutiny of the provisions of the Act makes it abundantly clear that through the intervention of the appropriate Government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. In case the proposition propounded by the learned counsel for the petitioner is accepted, then the object of the Government in providing for an extensive machinery for settlement and adjudication of industrial disputes would be frustrated. Thus, the remedy provided to a workman giving him right to claim a reference under Section 10 of the Act for the redress of his grievance is certainly an alternate remedy and does ordinarily bar the filing of a writ petition.

6. At this stage, reference may be made to another judgment of the Supreme Court in *Basant Kumar Sarkar and others* v. *The Eagle Rolling Mills Ltd. and others* (11), wherein exactly a similar question arose for consideration, that is whether a matter which could appropriately be raised in the form of a dispute under section 10 of the Act, should be gone into by the High Court under Article 226 of the Constitution. On this aspect of the matter, Gajendragadkar, C.J. (as his Lordship then was) speaking for the Court, observed thus :—

> "Before we part with these appeals, there is one more point to which reference must be made. We have already mentioned that after the notification was issued under S. 1(3) by respondent No. 3 appointing August 28, 1960 as

(11) AIR 1964 S.C. 1260.

the date on which some of the provisions of the Act should come into force in certain areas of the State of Bihar, the Chief Executive Officer of respondent No. 1 issued notices giving effect to the State Government's notification and intimating to the appellants that by reason of the said notification, the medical benefits which were being given to them in the past would be received by them under the relevant provisions of the Act. It was urged by the appellants before the High Court that these notices were invalid and should be struck down. The argument which was urged in support of this contention was that respondents No. 1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the Scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notice and circulars issued by respondents No. 1 were invalid, could not be considered under Art. 226 of the Constitution; that is a matter which can be appropriately raised in the form of a dispute by the appellants under S. 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Art. 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Sections 74 and 75 of the Act."

A bare perusal of the aforesaid observations shows that remedy under Section 10 of the Act has been treated as a proper remedy so as to bar the exercise of jurisdiction under Article 226 of the Constitution.

7. As a result of the aforesaid discussion, I hold that the mode of redress provided to a workman by claiming a reference

under Section 10 of the Act is a proper, efficacious alternative remedy which ordinarily would be a bar to the filing of a writ petition.

8. Coming to the judgments referred to by the learned counsel for the petitioner, suffice it to observe that in the view I am taking as a result of the discussion in the earlier part of the judgment, with respect, I am unable to subscribe to the view expressed therein.

9. Consequently, the decision in *Rajbir Singh's case* (supra) to the extent it holds that provisions of Section 10 of the Act cannot be considered to be providing an alternative remedy of the kind, which may be considered as bar to the maintainability of the writ petition, is overruled.

10. In view of my aforesaid findings, the writ petition is dismissed on the ground that the petitioner should avail of the alternative remedy available to him under the Industrial Disputes Act. In the circumstances of the case, I make no order as to costs.

G. C. Mital, J.—I agree.

N.K.S.

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