

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.19433 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner is directed against the Proceedings No.L-12012/ 13/ 2006-IR (B-II), dated 28.6.2006, of the 1st respondent, Union of India, refusing to refer the industrial dispute between the petitioner and the 3rd respondent, Bank of India, to the Labour Court as illegal, arbitrary, without jurisdiction and violative of Article 14 of the Constitution of India and consequently to direct the 1st respondent to refer the said dispute for adjudication to the Labour Court.

2. I have heard the submissions of *Sri P.B.Vijay Kumar*, learned counsel for the writ petitioner. There is no representation for the 1st respondent as well as respondents 3 and 4. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: "The 3rd respondent/ Bank is a Government of India enterprise. The petitioner was appointed, in the month of November, 1990, as a cooli on daily wages, in the office of the 4th respondent, Branch Manager, Bank of India, Regional Collection Centre, Secunderabad; and since then, he has been engaged for more than 20 days in a month. Though the petitioner was appointed as a coolie, he has been discharging the duties of an Attender in the 3rd respondent Bank. Hence, he filed W.P.No.11291 of 1994 seeking a direction to regularise his services as Attender in the respondent Bank. Later, he had withdrawn the said writ petition on the assurance of the Workman Union that they would recommend his case for regularization to the 3rd respondent Bank. Even after repeated persuasion by the Union for regularization of services of the petitioner, the respondent Bank terminated his services, with effect from 27.9.1994. Then, the petitioner approached the 2nd respondent, The Regional Labour Commissioner (Central), Vidyanagar,

Hyderabad, and raised a dispute and requested to intervene in the matter. The respondent Bank also filed objections. The 2nd respondent admitted the case of the petitioner for conciliation. Thereafter, as the conciliation failed before the 2nd respondent, the employees Union espoused the case of the petitioner and represented to refer the dispute to the Labour Court under Section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'). The 2nd respondent submitted failure report to the 1st respondent. The 1st respondent passed orders on the said report by proceedings No.L-12012/ 13/ 2006-IR (B-II) dated 28.6.2006 by stating that the case of the petitioner cannot be considered for adjudication on the ground of delay in raising the dispute. The 1st respondent ought not to have adjudicated the dispute on merits. When the process of conciliation failed before the 2nd respondent, he submitted his failure report to the 1st respondent; and, the 1st respondent instead of taking action within the ambit of powers contemplated under the provisions of Section 10 of the Act, passed the impugned order contrary to the said provision. The 1st respondent ought not to have decided the matter on merits and on the ground of delay, which is beyond the purview of the 1st respondent. The powers of the 1st respondent are only to make a reference to the Labour Court concerned for adjudication of the dispute raised. Apart from that, as per Section 25-H of the Act, the petitioner's case is entitled for consideration by the 1st respondent; however, the 1st respondent erroneously refused to refer the dispute to the Labour Court/Industrial Tribunal. The 1st respondent while discharging the functions contemplated under Section 10 of the Act is not a judicial Tribunal. The 1st respondent being a referral authority should not have delved into the merits of the matter, which function is exclusively within the domain of the Industrial Tribunal/ Labour Court. The delay itself cannot be a ground to deny the matter being referred to the Labour Court as the dispute raised is an industrial dispute. Hence, the writ petition is filed.

4. The 3rd respondent, Zonal Manager, Bank of India, Zonal Office, Hyderabad, filed a counter affidavit on behalf of the respondents 3 and 4. The averments in the counter affidavit, in brief, are as follows: 'All the material averments and the grounds raised by the petitioner in the writ petition are false. The petitioner was neither appointed against either any temporary or permanent vacancy of the Bank nor in any of its branches. The petitioner made a false claim before the Assistant Commissioner of Labour (Central), Hyderabad, with copies of documents fraudulently obtained from the Department. The said authority ought to have closed the matter even on the basis of the material documents provided by the workman himself. None of the documents produced by the petitioner before the said authority give scope to accept that he worked with the bank. The Bank submitted before the Conciliation Officer that the writ petitioner's services cannot be regularized as he has no relation with it. However, the Assistant Commissioner of Labour (Central) even after receiving the bank's representation, dated 13.07.2005, and after receiving detailed information from the Bank, found that the conciliation ended in failure and informed the 1st respondent accordingly. The petitioner was neither engaged as a coolie nor was he entrusted with the duties of Attender during the relevant period. W.P.No.11291 of 1994 was dismissed at his instance only; but, the Bank never assured the writ petitioner that it would recommend his case for regularization. The petitioner, having slept over the matter for more than 12 years, is now making a futile attempt with ill-motives and is abusing the process of law. The petitioner deliberately failed to make a statement as to what he has been doing for all these 12 years. Even according to the petitioner, he is now aged 32 years and in 1990, he was 16 years old. The Bank being a Public Sector undertaking cannot appoint a minor. Thus, it is clear that the averment that the petitioner was appointed in the Bank in the year 1990 is invented. The petitioner stated that he worked as a coolie and therefore, the records of the Department are not accessible to him. But, the

petitioner had stolen the departmental correspondence and obtained photostat copies of the same. The petitioner has been deceiving not only the Labour Department but also this Court with all his obnoxious statements. The photostat copies of the documents produced by the writ petitioner before the Assistant Commissioner of Labour (Central) are no way connected to the petitioner and as such, they need not be relied upon. The 1st respondent while rejecting to refer the matter for adjudication rightly found that the writ petitioner did not establish relation with the bank and that the claim is stale as it is as old as 12 years. The decision cited by the 1st respondent squarely covers the issue involved. The Bank is contemplating to take appropriate criminal action against the writ petitioner for obtaining all departmental information fraudulently. The writ petition is misconceived and is liable to be dismissed with exemplary costs. The writ petitioner failed to produce any document before the Assistant Commissioner to show that he worked during any period in the Bank. In the failure report, dated 12.01.2006, the Assistant Commissioner gave his findings. The 1st respondent has to decide whether the disputant is a workman or not within the meaning of the Act in respect of particular establishment. When the disputant fails to prove that his services are related to a particular establishment, the 1st respondent is entitled to reject to refer the disputant's claim for adjudication. The prayer in the writ petition and the WPMP are one and the same. The writ petitioner suppressed the fact that he had already approached the Court and filed W.P.No.11291 of 1994 and that it was later withdrawn; further, at the time of withdrawal of the earlier writ petition, the petitioner failed to obtain liberty from the Court to file a fresh writ petition. This fact has been suppressed by the writ petitioner in the affidavit filed in support of the writ petition as well as before the Assistant Commissioner of Labour (Central). The writ petitioner filed the instant writ petition after 12 years of withdrawal of the earlier writ petition in W.P.No.11291 of 1994. The proceedings initiated by the petitioner before the

Assistant Commissioner of Labour (Central), Hyderabad, are hit by delay and laches. Hence, the writ petition is liable to be dismissed *in limine* with exemplary costs throughout.

5. When the matter came up for consideration, on 04.03.2017, learned counsel for the petitioner made submissions in line with the pleadings. Learned counsel for the petitioner also placed reliance on the decision in *Sarva Shramik Sangh v. Indian Oil Corporation Ltd.*¹

6. However, there was no representation for the respondents 1, 3 and 4. Hence, the matter is listed today under the caption 'For Orders'. Even on this day also, there is no representation for the said respondents.

7. In *Sarva Shramik Sangh* (supra) the Supreme Court succinctly stated the legal position as under:

"It is true that making a reference under Section 10(1) of the ID Act is within the discretion of the appropriate government. Referring to the un-amended Section 10(1) of ID Act, this Court in *State of Madras v. C.P. Sarathy* (1953) ILLJ 174 SC, laid down the following principles:

(i) The government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an `industrial dispute exists or is apprehended.

(ii) The factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the government to decide.

(iii) The order making a reference is an administrative act and it is not a judicial or a quasi-judicial act.

(iv) The order of reference passed by the government cannot be examined by the High Court in its jurisdiction under Article [226](#) of the Constitution to see if the government had material before it to support the conclusion that the dispute existed or was apprehended.

¹ (2009) 11 Supreme Court Cases 609

The opening words of Section 10 of ID Act "if any industrial dispute exists or is apprehended the appropriate government may" were replaced by the words "where the appropriate government is of the opinion that any industrial dispute exists or is apprehended it may at any time" by Act 18 of 1952. The issue was thereafter again considered in *Rohtas Industries Ltd. v. S.D. Agarwal* [1969] 3 SCR 108. After referring to the propositions in *Sarathy*, this Court held:

This interpretation of Section 10(1) is based on the language of that provision as well as the purpose for which the power in question was given and the effect of a reference. That decision cannot be considered as an authority for the proposition that whenever a provision of law confers certain power on an authority on its forming a certain opinion on the basis of certain facts, the courts are precluded from examining whether the relevant facts on the basis of which the opinion is formed had in fact existed. (Emphasis supplied)

The amended Section 10 was considered in *Western India Match Co. v. Western India Match Co. Workers' Union* (1970) 11 LLJ 256 SC. This Court, again, after referring to the observation in *Sarathy* that the order of the government is an administrative function, observed thus: 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 the employees may not continue to remain disturbed, and the dispute may be resolved through a judicial process as speedily as possible. In *State of Bombay v. K.P. Krishnan* (1960) 11 LLJ 592 SC, this Court referred to the scope of Section 10(1) thus: Section 10(1) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute to one or the other authority specified in Clauses (a) to (d). This section is of basic importance in the scheme of the Act. It shows that the main object of the Act is to provide for cheap and expeditious machinery for the decision of all industrial disputes by referring them to adjudication, and thus avoid industrial conflict resulting from frequent lock-outs and strikes. It is with that object that reference is contemplated not only in regard to existing industrial disputes but also in respect of

disputes, which may be apprehended. This section confers wide and even absolute discretion on the Government either to refer or to refuse to refer an industrial dispute as therein provided. Naturally this wide discretion has to be exercised by the Government bona fide and on a consideration of relevant and material facts. This Court clarified that the writ court can direct the government to reconsider whether a reference should be made or not after leaving out the relevant and extraneous considerations.

8. Thus, from the precedential guidance it is manifest that the Government cannot go into the merits of the main dispute and that its function is only to decide as to whether a dispute exists or not or a dispute is apprehended or not and then refer for adjudication, if so satisfied, so that the industrial relations between the employer and the employees may not continue to remain disturbed, and the dispute or the apprehended dispute may be resolved through a judicial process as speedily as possible. Thus there is no doubt, the Government is not entitled to enter a finding on the merits of the case and decline a reference. It is also clear from the ratio that reference is contemplated not only in regard to existing industrial disputes but also in respect of disputes, which may be apprehended and that the provision of law confers wide and even absolute discretion on the Government either to refer or to refuse to refer an industrial dispute as therein provided and that naturally this wide discretion has to be exercised by the Government *bona fide* and on a consideration of relevant material facts leaving out extraneous material. Nevertheless, the Government, after applying its mind to the relevant factors satisfy itself as to the existence of a dispute or its apprehension before taking a decision to refer the same for adjudication. On the analysis of facts and on carefully considering the legal position obtaining, this Court considers that it is apposite to dispose of the writ petition with appropriate directions.

9. Accordingly, the Writ Petition is disposed of directing the Government to examine whether a dispute exists or not in the instant case; nonetheless, in case the Government is so satisfied, it should refer the same for adjudication before the Tribunal/ Labour Court. Needful should be done within a period of two months from to-day.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

20.03.2017
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