

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.27209, 27213 & 27218 OF 2003

COMMON ORDER:

Heard Mr.A.Prabhakar Sarma and Mr.G.Ravi Mohan for petitioners and the Assistant Government Pleader for 1st respondent. No representation for 2nd respondent.

The prayers in these three writ petitions are substantially same and similar. The respondents are common, however, petitioners are the ex-employees of Parke Davis India Limited, and have filed these writ petitions challenging the same proceedings.

The learned counsel appearing for the parties submit that reference to the pleadings in W.P. No.27209 of 2003 would suffice reference to pleadings in other writ petitions as well.

W.P.No.27209 of 2003

The petitioner prays for Mandamus declaring the action of respondents in proceedings No.C1/3747/2002 dated 29.04.2003 and 28.01.2003 of 1st respondent as arbitrary, *ex facie* illegal and contrary to the mandate of Section 12 of the Industrial Disputes Act, 1947 (for short the 'the Act').

The case of petitioner is that the petitioner was working in Parke Davis India Limited. A Scheme of Amalgamation between Parke Davis (I) Limited (for short 'Parke Davis') and Pfizer (I) Limited (for short 'Pfizer') was sanctioned by the Company Court of Bombay High Court. Therefore, though the petitioner was working as a workman in Parke Davis, the petitioner states that Pfizer being

the company which is brought into existence pursuant to the order of amalgamation, is legally under obligation to answer the claims of petitioner and hence, shown as one of the respondents in the writ petition. In the year 2002, Parke Davis offered Voluntary Retirement Scheme (VRS) to its employees. The petitioner alleges that the real intention of Parke Davis merger was more to transfer the assets of Parke Davis in favour of Pfizer/ 2nd respondent and close down Parke Davis in which the petitioner was working. The merger of Parke Davis with Pfizer had taken place after retiring the workmen of Parke Davis under VRS, 2002. In the process of merging Parke Davis with 2nd respondent and operating VRS, the petitioner and similarly situated workmen have been subjected to injustice and were denied 15 to 20 years of fruitful service rendered by them in Parke Davis. The workmen, with a view to getting the dispute adjudicated, pursued remedy against forcible retrenchment and non-payment of adequate compensation, by approaching 1st respondent under Section 12 of the Act. The 1st respondent through communication No.C1/3747/2002 dated 28.01.2003 returned the request of petitioner and other workmen by observing that the Assistant Commissioner of Labour-II, Hyderabad opined that complaint does not fall within the definition of Section 2(k) of the Act. Further, the terms of VRS were accepted voluntarily and employees received the benefits and as such, no dispute can be raised for conciliation. Hence, the representation dated 26.09.2002 is not fit for admission in conciliation and the representation dated 26.09.2002 was accordingly disposed of. The workmen explaining their grievance submitted representation dated 23.03.2003 as to how in the given

circumstances an Industrial Dispute arises and what is the statutory obligation of 1st respondent to consider and act in accordance with law on the representation given by them. The 1st respondent through communication C1/3747/2002 dated 29.04.2003 confirmed the rejection dated 28.01.2003, but however, added a few more grounds in support of earlier rejection. The additional grounds stated by the 1st respondent are that the scheme of VRS operated by 2nd respondent does not fall under IV Schedule of the Act and therefore, whether the prior notice of 42 days which is mandatory under the Act to effect change as specified in IV Schedule is applicable or not, and whether issuing 10 days time for VRS is tenable, does not come for consideration under Section 12 of the Act. Further, the workmen who have opted for VRS and taken the benefits, cease to be the employees of company and as such the present dispute raised under Sections 9-A and 2(k) of the Act does not warrant consideration of 1st respondent under Section 12 of the Act.

The petitioner challenges the communication, by styling it as proceeding, in the instant writ petition.

The 1st respondent filed counter. The 1st respondent admits receiving representation and states that the representation was forwarded to the Assistant Commissioner of Labour-II, Hyderabad for further action thereon. According to 1st respondent, mere filing of representation in Form-F under Section 36 of the Act cannot be treated as industrial dispute. According to 1st respondent, the representation should fall within the definition of industrial dispute vide Section 2(k) of the Act. The 1st respondent further states that

the Assistant Commissioner of Labour Court-II, Hyderabad conducted enquiry, report of the Assistant Commissioner opined that there is no dispute as defined under the Act and the report shows that no element of coercion was proved by employees. The terms of VRS were accepted voluntarily, benefits paid to workmen by Parke Davis and these benefits were duly acknowledged by workers. Therefore, according to 1st respondent, with the implementation of VRS and acceptance of VRS benefits, the petitioner and the similarly situated workmen cease to be employees of the Parke Davis. Therefore, the dispute does not attract Section 2(k) of the Act. It is further stated that on the allegation of petitioner that for the change of service conditions covered by Section 9A proper notice was not issued, it is replied that the Assistant Commissioner examined the record before disposing of the representation dated 23.03.2003 and the conclusion recorded in the impugned proceedings is that Section 9A of the Act is not applicable. Though procedure under Section 12 was set in motion, in the light of findings recorded, further action was not warranted. The outcome was informed to the workmen through proceedings dated 28.01.2003 and 29.04.2003.

It is important to note that the basis for communication dated 28.01.2003 is the report of Assistant Commissioner of Labour-II. Hence, it is stated the representation of workmen of Parke Davis is examined, report from Assistant Commissioner of Labour was called for and from the report it is evident that what is sought to be presented as an industrial dispute before the

1st respondent does not satisfy the meaning of Sections 2(k) and 9A of the Act. The 1st respondent prays for dismissing the writ petitions.

The 2nd respondent has not filed reply.

Learned counsel for petitioner contends that the 1st respondent being the authority under Section 12 of the Act has not appreciated the tenor of representations dated 26.09.2002 and 23.03.2002. According to the counsel, the grievance is against forcible retrenchment of workmen under the guise and in the name of operating VRS, 2002. The compensation stated in VRS, 2002 is not the compensation to which the workmen are entitled; the workmen were compelled to accept the VRS and, therefore, the very severance of relationship between the workmen and management is in issue between workmen and Parke Davis. In support thereof, the counsel draws the attention of the Court to the following assertion in the representation dated 26.09.2002:

“We respectfully submit that we were employed as workmen in the industry who had been sent home under VRS Scheme-2002, forcefully implemented. We have been treated unequally and discriminated. Discriminating one employee or one set of employees or workmen against another set of employees or workmen is an unfair labour practice. In fact, in the name of VRS total work force was driven out by 26.04.2002 and assets of the Parke Davis are sought to be transferred to the Pfizer Ltd., in the name of proposed merger”.

He further contends that the 1st respondent plays the role of a Conciliation Officer under Section 12 of the Act. Therefore, the 1st respondent without examining the case of workmen viz., that a forcible option was thrust on them, cannot record a conclusion

that the terms of VRS were accepted voluntarily, workmen received the benefits resulting in severance of relationship of worker and master and hence dispute cannot be raised. The further finding that representation dated 26.09.2002 is not fit to admit in conciliation virtually decides the dispute and assumes the role of industrial adjudicator, which is not within the jurisdiction of 1st respondent. He argues that the cause of action pointed out by the workmen is the alleged forcible severance of relationship, not the operation of VRS 2002 by Parke Davis. If the workmen, in fact, have been forced to accept the VRS, the severance of relationship does not amount to voluntarily cessation of employee-employer relationship. The effect of accepting the VRS is so much dependent on appreciating the cause canvassed by the workmen. It is further contended that the 1st respondent under Section 12 of the Act cannot convert the forum from conciliation to conclusion of a dispute, and assume the role of industrial adjudicator on the grievance of petitioner and decide the representation. Counsel, without admitting, alternatively contends that even if the representation of the workmen does not warrant a favourable report, the outer limit of 1st respondent's jurisdiction is to forward a report to appropriate Government, as he thinks appropriate on the grievance brought to his notice. But the 1st respondent on his own accord cannot decide and record a finding that the dispute brought out by the workmen cannot be treated as an industrial dispute. The conclusions viz., on operation of VRS, acceptance of benefit, severance of relationship virtually amounts to accepting the case of management and adjudication by adjudicator.

In support of these contentions, the petitioner places strong reliance upon Section 12 of the Act and also the decisions in JASWANT SUGAR MILLS, LTD., MEERUT v. LAKSHMI CHAND AND OTHERS¹, TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANOTHER v. STATE OF BIHAR AND OTHERS², ARIANE ORGACHEM PRIVATE LIMITED v. WYETH EMPLOYEES UNION AND OTHERS³, LAL CHAND v. STATE OF HARYANA⁴, PAINTS EMPLOYEES' UNION (BY GENERAL SECRETARY) AND ANOTHER v. NAIL (MD) (ASSISTANT COMMISSIONER OF LABOUR AT BOMBAY), AND ANOTHER⁵. He prays for allowing the writ petition.

Learned Assistant Government Pleader contends that the 1st respondent having regard to the admitted circumstances in the representation and also the report submitted by the Assistant Commissioner has rightly disposed of the representation by holding that there is no industrial dispute in the representation filed by the workmen and that the variation to conditions does not come within Schedule IV of the Act. He further contends that the workmen by accepting VRS cease to be the employees of Parke Davis and, therefore, the Act has no application. On the contention that with the acceptance of VRS benefits no industrial dispute can be raised, he places reliance on BAYER BIO SCIENCES PVT. LTD.,⁶ and VIJAY KUMAR v. WHIRPOOL INDIA LIMITED⁷ and prays for dismissing the writ petition.

¹ 1963(1) LLJ SC 524

² (1989) 3 SCC 271

³ 2015(7) SCC 561

⁴ 1998(3) LLJ 419

⁵ 1966(1) LLJ 579

⁶ 2011(1) ALT 344

⁷ 2008(1) SCC 119

I have taken note of the submissions of the learned counsel appearing for the parties and perused the material available on record.

Having regard to the pleadings and submissions made in this behalf, this Court is of the view that the following question arises for consideration:

Whether letter No.C1/3747/2002 dated 28.01.2003 r/w letter No.C1/3747/2002 dated 29.04.2003 is legal and conforms to the scheme of Section 12 of the Act?

Though the counsel have laid much emphasis on averments in the affidavit and the stand in the counter affidavit, but having regard to the point framed for consideration, and the scope of judicial review under Article 226 of the Constitution of India, this Court is of the view that by referring to the actual tenor which is the basis for the communication impugned in the writ petition, the point can be taken up for discussion and decision. The communications dated 28.01.2003 and 29.04.2003 read thus:

28.01.2003

The Asst. Commissioner of Labour-II, Hyderabad opined that the present issue raised does not fall within the definition of Sec.2(k) of the I.D Act. 1947. The terms VRS were accepted voluntarily and received the benefits and such no dispute can be raised now.

Therefore, the representation dt.26.09.2002 is not fit to admit in conciliation and accordingly, the said representation is disposed off.”

29.04.2003

“As seen prior notice of 42 days is mandatory for the employer to effect any change as specified in IV schedule. In the present matter the issue raised by the workmen is giving (10) days time for VRS instead of 42 days. But the Scheme of VRS does not fall under

4th Schedule of I.D.Act and also the scheme is not compulsory and it is only voluntary.

The Ex-workman who have availed VRS and taken the benefits and are ceased to be the employees of the company and as such the present dispute raised U/Sec..9-A and 2(k) has no merits to consider.

Accordingly, the issue raised by the workman is not fit to admit in Conciliation and the representation dt.23.03.2003 is disposed off.”

Now let me refer to Section 12 of the Act:

Duties of conciliation officers.-

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, (Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that, [subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

Section 12 of the Act deals with duties of Conciliation Officer.

Section 12(1) of the Act mandates holding conciliation proceedings on an existing industrial dispute or an apprehended dispute. Under Section 12(2), the Conciliation Officer for the purpose of bringing about a settlement of the dispute (i) investigates the disputes, all matters affecting merits and the right settlement and does all things for inducing parties to come to an amicable settlement, which is fair. Section 12(3) obligates forwarding the settlement or report to appropriate Government. Under Section 12(4), Conciliation Officer reports the disputes, efforts made by him and why the disputes could not be settled. The acceptance of report results in reference of a dispute to Labour Court. On the other hand, if appropriate Government does not make reference, reasons are recorded. A plain reading of Section 12 does not lead to conferring the role of an industrial adjudicator either to Conciliation Officer or the

appropriate Government such jurisdiction or authority is conferred on the Industrial Tribunal or Labour Court.

The pivotal role a Conciliation Officer plays at the stage of pre-litigation parlay is subject matter of a few decisions of the Hon'ble Supreme Court and various High Courts. The object of Section 12 of the Act is to prevent a demand or negotiable dispute from triggering into a dispute or industrial problem. If the efforts under Section 12 of the Act are result in a report to Government, the grievance/report receives further and different examination from the Government. Even at that stage, adjudication on grievance is impermissible. Therefore, the 1st respondent whether can conclude the fact in issue the question for consideration.

The foremost objection or argument of petitioner is that refusal of representation amounts to adjudication of issues; the adjudication of issue or dispute is not within the jurisdiction of 1st respondent.

To bring home his argument on deciding the dispute, he relies on the literal and legal meaning of 'adjudicate' and 'adjudication'. The word 'adjudicate' and 'adjudication' as per Webster Dictionary mean –

Adjudicate: To hear or try and determine, as a court; to settle by judicial decree; to adjudge.

Adjudication: Adjudication is used of the determination of matters in dispute by the decision of a competent Court.

And as per P.Ramnatha Aiyar's – The Law Lexicon the words 'adjudicate' and 'adjudication' mean –

Adjudicate: 1. To settle finally (the rights and duties of the parties to a court case) on the

merits of issues raised: enter on the records of a court (a final judgment, order, or decree of sentence).

2. To pass judgment on: settle judicially.

Adjudication: the act or process of adjudicating.

To be binding and enforceable, the adjudication or decision on an issue shall be by an authority clothed with jurisdiction. It is not the case of Assistant Government Pleader that 1st respondent is vested with such authority.

In this background, let me refer to the following decisions.

The Hon'ble Supreme Court in *JASWANT SUGAR MILLS LIMITED* (supra 1) while considering the scope of Conciliation Officer whether it includes judicial power has held as follows:

"A Conciliation Officer functioning under cl. 29 of the order issued by the Governor of Uttar Pradesh under the Provisions of Uttar Pradesh Industrial Disputes Act, 1947 is not an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, his authority being derived from the appointment made by the State of Uttar Pradesh under the U. P., Industrial Disputes Act, 1947. Nor is any provision made in the U. P. Industrial Disputes Act or Orders made thereunder for an appeal to any similar authority against the direction made by the Conciliation Officer in exercise of the power conferred under cl. 29. An appeal lies under s.4 of the Act. 48 of 1950, against the direction of a Conciliation Officer only if he is a Court or Authority. The Legislature has used in cl.(iii) the expression "any court, board or other authority"; the context indicates that the word "other authority" must be read ejuadem generis with Court or Board. The right to appeal conferred by s.4 is only against awards or decisions, and a Conciliation Officer makes no award, nor even a decision. His function is not to deliver a definitive judgment affecting the rights of the parties before him.

He is not invested with power to adjudicate industrial disputes. It is true that he is constituted under a statute which relates to adjudication of industrial disputes, but his functions are purely incidental to industrial adjudication. His power is not of the same character as that of an Industrial Court or Board or Tribunal. An authority under [S.2 \(c\) \(iii\)](#) to be an industrial tribunal must be a body constituted for the purpose of adjudication of industrial disputes under a law made by a State. The Conciliation Officer not having been invested with any such power, he cannot be regarded as an "authority" within the meaning of [s. 2\(c\) \(iii\)](#) of the Industrial Disputes (Appellate Tribunal) Act. Hence an appeal to the Labour Appellate Tribunal under S.6 of the Industrial Disputes (Appellate Tribunal) Act against the order of Conciliation Officer acting under cl.29 of the order must be held unmaintainable".

Similarly, in TELCO DRIVER's case (supra 2) while considering an order refusing to refer a dispute raised by workmen on the ground that the persons raising the dispute are not workmen, the Apex Court has held as follows:

It is true that in considering the question of making a reference under [section 10\(1\)](#), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference, should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is undoubtedly, not permissible.

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Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under [section 10\(1\)](#) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasijudicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by [section 10](#) of the Act. See [Ram Avtar Sharma v. State of Haryana](#), [1985] 3 SCC 189; [M.P. Irrigation Karamchari Sangh v. The State of M.P.](#), [1985] 2 SCC 103 and [Shambhu Nath Goyal v. Bank of Baroda, Jullundur](#), [1978] 2 SCC 353.

Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the person raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under [section 10\(1\)](#) of the Act. As has been held in [M.P. Irrigation Karamchari Sangh's](#) case there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render [section 10](#) and [section 12\(5\)](#) of the Act nugatory.

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It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the

Industrial Tribunal and, as the Government has persistently declined to make a reference under [section 10\(1\)](#) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under [section 10\(1\)](#) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See *Sankari Cement Alai Thozhilalar Munnetra Sangam v. Government of Tamil Nadu*, [1983] 1 SCC 304; *Ram Avtar Sharma v. State of Haryana*, M.P. Irrigation Karamchari Sangh v. The State of M.P. and *Nirmal Singh v. State of Punjab*, 1984 Supp SCC 407. In the circumstances, we direct the State of Bihar to make a reference under [section 10\(1\)](#) of the Act of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh by its letter dated October 16, 1986 addressed to the General Manager TELCO (Annexure R-4/1 to the Special Leave Petition), to an appropriate Industrial Tribunal within one month from today”.

To the same effect is the decision of Apex Court in *ARIANE ORGACHEM PRIVATE LIMITED* (supra 3) and this case in particular deals with a VRS scheme and disputes arising subsequent to operation of VRS scheme has finally held as follows:

Further, the High Court has rightly adverted to various judgments of this Court including *Bombay Union of Journalists v. State of Bombay*[15] wherein it was held thus:

”6.it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under [Section 10\(I\)](#) read with [Section 12\(5\)](#), or not. If the claim made is patently frivolous, or is clearly belated the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether

a reference should be made or not. It must, therefore, be held that and prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under [Section 10\(1\)](#).....”

Therefore, in the present case, the dispute raised by the respondent-Union on behalf of the workmen concerned is neither patently frivolous nor is it a belated claim of the workmen concerned. The contention of the learned senior counsel for the appellant that the workmen are barred from raising the industrial dispute on the ground of estoppel, is also rejected by this Court in view of the fact that estoppel is a principle of equity which deals with the effect of contract and not with its cause. It does not mean that a void or voidable contract cannot be adjudicated by the Industrial Tribunal/courts merely because the workmen concerned have accepted the voluntary retirement as pleaded by them and other benefits from the appellant as per the case of National Insurance Co. Ltd. (supra).

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A similar view has also been taken by this Court in [VLS Finance Limited v. Union of India](#) and [Greater Mohali Area Development Authority v. Manju Jain](#), wherein it has been held that pure question of law can be raised at any stage of litigation.

In [National Textile Corporation v. Badrkumar Jagad](#), it has been held by this Court that a new ground raising pure legal issue for which no inquiry or proof is required, can be raised at any stage.

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The reliance placed upon the various judgments of this Court by the learned senior counsel for the appellant on merits of the alleged voluntary retirement of the workmen concerned need not be examined in these appeals by this Court, as those judgments have no application to the fact situation of the present case and it would be premature to apply the said principles to the fact situation at this stage, particularly, having regard to the legal contentions urged by the learned senior counsel on behalf of the respondent-Union.

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These appeals are dismissed with costs of Rs.one lakh in each appeal towards the cost of these proceedings, for the reason that they have caused delay in referring the dispute to the Industrial Tribunal for its adjudication. The same shall be deposited before the Industrial Tribunal immediately after the order of reference is made to it and before the parties are called upon to file their respective claims and the said amount shall be paid to the workmen concerned proportionately through the first respondent-Union. The order dated 24.9.2007 granting stay of the impugned order shall stand vacated”.

In LAL CHAND's case (supra 4), a Division Bench of Punjab and Haryana High Court after interpreting each one of the stages under Section 12 of the Act has held as follows:

“.....This shows that the conciliation officer is not vested with any power to reject the demand raised by the employee. As a logical corollary it must be held that the conciliation officer does not have any power to enter into the merits of the dispute and to take a decision whether any industrial dispute exists or not. The conciliation officer is also not entitled to decide whether or not he should send a report to the Government.

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It further goes to hold that the scope of the power of the Government does not in any manner lead to interference that the power of the Government can be exercised by the Labour-cum-Conciliation Officer as has been done in the instant case. Respondent No.2 crossed all the limits of his jurisdiction when he passed the orders annexures P4, P5 and P6 and declared that as per the management, the institution has been closed and if there is a dispute of closure, the workmen can raise dispute under Section 2 and that no dispute is made out under Section 2A of the Act and therefore, the demand should be filed. In exercising the power of the Government,

the Labour-cum-Conciliation Officer has clearly acted without jurisdiction.

On the scope of judicial review vis-à-vis an order refusing to admit a dispute or forward a report to the Government, the Division Bench of High Court of Bombay in PAINTS EMPLOYEES UNION's case (supra 5) has held as follows:

“It is now well-settled that an order refusing to take a dispute in conciliation is an administrative order. Unless the conciliation officer has committed some error of law in refusing to take up the dispute for conciliation, the High Court could not interfere with his action in a writ petition. Where the conciliation officer, after satisfying himself that the action of the management in regard to promotions was bona fide, refused to take up the dispute in such regard for conciliation, the High Court could not interfere with the order of the conciliation officer in a writ petition filed on behalf of the aggrieved workman”.

The Assistant Government Pleader does not dispute the legal ground raised by the petitioners that during and in the process of conciliation, the Conciliation Officer cannot go deep into the complexities of dispute presented by the parties, much less express any opinion on the representation filed by workmen. He submits that since VRS was offered and accepted the 1st respondent thought the relationship is severed. Therefore, as Conciliation Officer, he need not receive a grievance from workmen. The definite stand of the 1st respondent is placed on record.

Now coming to the order rejecting the representation, the following circumstances emerge:

The grievance of workmen as ventilated through representation is that the forcible implementation of VRS terminated

their services arbitrarily and in a discriminatory fashion. The severance of relationship is not the issue but the mode and manner in which the severance has taken place was presented in the form of industrial dispute and was brought to the notice of 1st respondent. The 1st respondent has to initiate conciliation by summoning the management and workmen and is required to prepare the report as Conciliation Officer and forward to Government.

The Government while exercising its power under sub-sections (3) to (5) of Section 12 cannot express a view on the dispute on which report is received. The consistent view taken by the Courts is that such expression of view on the alleged dispute is beyond the jurisdiction of Government. Once such a restriction is imposed on the Government which has final say in the operation of Section 12 of the Act, expressing a view on merits by 1st respondent, in the considered view of this Court is without jurisdiction, illegal and arbitrary. To conclude this aspect of the matter, at the cost of repetition, the Court notices that the 1st respondent pronounces on the nature of grievance, that the grievance brought to his notice does not fall within the definition of Section 2(k) of the Act. The 1st respondent records a finding contrary to the allegation of workmen without trial or enquiry that the acceptance of VRS is voluntary, and further holds that admission of dispute does not arise as there is severance of relationship.

There is yet another reason for disagreeing with the submission of 1st respondent. The argument leads to a very anomalous

situation for in cases of forcible cessation of relationship of workmen, the mode and manner of cessation becomes the issue and a finding thereon ultimately decides the jurisdiction and authority of industrial adjudicator. The coercion complained by the workmen, if not examined under the scheme of the Act, the workmen will be deprived of a remedy under the Act.

This Court after going through the representation disagrees with the view of the 1st respondent expressed on the merits of an alleged dispute presented to 1st respondent for conciliation under Section 12 of the Act. Section 12 of the Act neither expressly nor from a plain literal reading of the section provides for undertaking any of the meanings assigned to the words 'adjudicate' or adjudication'. The expression of a view, or determination of a fact in issue, the 1st respondent must be authorized to do so. The application to forward report ought not to be understood as concluding the report and rejecting the application. Such acceptance or rejection etc., is in the exclusive domain of the Government.

Having gone that far, this Court does not prefer to further deal with the issue which was presented before the 1st respondent, for such course can also lead to adjudication. Once a proceeding is taken up under Section 12 of the Act, it shall be given quietus only in the manner provided by Section 12 of the Act. Admittedly, in this case, the 1st respondent has gathered material and states that the Assistant Commissioner of Labour has forwarded a report in this behalf. Instead of expressing any view on the merits, this Court is of

the view that by setting aside the communication impugned in the writ petition, the 1st respondent be directed to prepare a detailed report on the representation and forward the report to Government for consideration in accordance with law. The exercise of forwarding the report and consideration by Government shall be completed within a period of three months from the date of receipt of a copy of this order.

For the reasons stated above, the writ petitions are ordered as indicated above. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

30th March, 2017

Note:

LR copy to be marked.

B/o.

Lrkm/stp



S.V.BHATT, J