

(Reportable)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10795 OF 2019

VIJAY SHANKAR TIWARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Barde Parag Vijay
AGP for Respondents 1 and 2 : Mrs.V.S. Chaudhari
Advocate for Respondents 3 and 4 : Shri R.D. Borde h/f Shri U.S. Malte

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2022

ORAL ORDER:

1. I have considered the strenuous submissions of the learned advocates appearing for the respective parties.
2. A very short issue is raised in this petition. Whether, the Assistant Commissioner of Labour, exercising jurisdiction as Conciliation Officer, can refuse to submit a failure report when the dispute raised before him is not resolved post conciliation.
3. The petitioner has superannuated from employment on 31.08.2013 after joining duties on 26.06.1979. He raised an industrial dispute on 06.09.2017 putting forth two grievances. Firstly that, his annual increment was stopped for one year by order dated 21.02.2012 and by order dated 04.05.2012, he was imposed penalty of Rs.25,000/-.

Secondly, since he was suspended prior to issuing the order of punishment dated 21.02.2012, his suspension period was maintained. Therefore, he was not paid the entire wages for the suspension period, besides the suspension allowance.

4. The Conciliation Officer has closed the file without tendering the failure report to the appropriate Government, which is the Deputy Commissioner of Labour, on the ground that as the petitioner has superannuated on 31.08.2013, no employer-employee relationship exists between him and his employer. He has been paid his retiral benefits and therefore, he cannot approach the Conciliation Officer. Instead, he should have gone to the Court.

5. The learned AGP has strenuously supported the impugned order in the light of the affidavit in reply filed on 29.07.2021. In paragraph 7 of the affidavit in reply, the Conciliation Officer submits that as the petitioner has accepted his retiral benefits on superannuation, he cannot raise an industrial dispute once he has accepted his benefits.

6. The learned advocate for respondent Nos.3 and 4 has vehemently opposed this petition and submits that the Conciliation Officer has rightly passed the impugned order.

7. It is settled law that the role of the Conciliation Officer is to conciliate. When an industrial dispute is raised before him, he has to admit the dispute in conciliation. If the conciliation fails, he has to tender

a failure report to the competent authority, which ultimately takes a decision of referring the dispute to the Tribunal if an industrial dispute exists.

8. In the instant case, the petitioner has raised two issues. One is that his one annual increment has been withheld for one year and his suspension period is maintained and secondly, he was illegally imposed with costs of Rs.25,000/- by the employer. He has approached the Conciliation Officer five years after his superannuation.

9. Paragraphs 12, 13 and 14 of the ***Associated Cement Staff Union vs. State of Maharashtra and others, 2009 (3) Mh.L.J. 915***, read as under :-

“12. *Having said so, and considering the provisions of Section 12, the power conferred on the Conciliation Officer is limited to initiation of conciliation proceedings and submitting a failure report to the appropriate government. It is not for the Conciliation Officer to enter into the merits of the industrial dispute. The decision whether to make reference or not to make reference, if prima facie industrial dispute exists is within the exclusive jurisdiction of the appropriate Government. The formation of opinion whether an Industrial Dispute exists is of the Appropriate Government.*

A Conciliation Officer can initiate conciliation proceeding only when prima facie an industrial dispute exists or is apprehended pertaining to terms of employment and conditions of service. The Conciliation Officer cannot enter into the merits of the dispute. What is relevant to note is that if ex facie on the consideration of the demands, they do not partake or have the character of conditions of service or terms of employment, the Conciliation Officer cannot be called upon to enter into conciliation proceedings as prima

facie demands would not fall within the definition of an industrial dispute. If he cannot enter into conciliation proceedings, the question of submitting a failure report would not arise. The failure report is a consequence of entering into conciliation proceedings. The distinction therefore, is that once the Conciliation Officer enters into conciliation proceedings, the only jurisdiction vested in him is to submit a failure report. However, where on the conciliation Officer being called upon to enter into conciliation proceedings, if on the prima facie consideration he forms an opinion, that the predicates of an Industrial dispute do not exist, then it is open to him to decline to enter into conciliation, though normally the appropriate course will be to send his report to the appropriate Government and it is the appropriate Government to decide whether to make for a reference or decline to make a reference.

13. *In the instant case, the Conciliation Officer has declined to enter into conciliation. By his communication dated 18.1.2008, the Conciliation Officer has clearly set out that the demand raised by the Union in the matter of allotment of shares to employees is not in any way connected to service conditions of employees and that is governed by the SEBI guide-lines. This exercise of power by the conciliation officer is neither quasi judicial or judicial. It is administrative. On failure therefore, to enter into conciliation, it will be open to this court in the exercise of its extra ordinary jurisdiction to examine the order declining to enter into conciliation.*
14. *In our opinion, therefore, normally a conciliation officer ought not to decline to enter into conciliation proceedings. The Conciliation Officer should leave that for the decision of the appropriate Government whether to make a reference on the failure report that he has to send. If however, on a plain reading of the demand, it does not prima facie partake of an industrial dispute, the Conciliation Officer, may decline to enter into conciliation. On the facts of the present case, having come to the conclusion that the demand raised does not partake of an industrial dispute this will not be a fit case for us to exercise our extra ordinary jurisdiction. Consequently, rule discharged. No order as to costs.*
(Emphasis supplied)

10. In the case in hand, the Conciliation Officer, after receiving the notice issued by the workman, should have caused a hearing in the matter to assess whether, the dispute was required to be admitted in conciliation. Merely because the worker had received his retiral benefits, would not extinguish his relationship with the employer if he has a claim against the employer with regard to his service benefits. It is the case of the Conciliation Officer, going by the affidavit in reply dated 26.07.2021 filed by him, that a disciplinary enquiry was conducted against the workman, he was found guilty of the charges, he was issued with the second show cause notice, he had replied to the said notice and finally, by order dated 21.02.2012, he was punished with stoppage of one increment permanently. He was also saddled with a fine of Rs.25,000/- by way of punishment.

11. It is well settled that the Conciliation Officer has to assess, the prima facie existence of an industrial dispute. He cannot adjudicate upon the claim of the workman. He cannot decline to submit a failure report. Acceptance of retiral benefits does not mean that the worker's grievance against the employer is compromised or settled and such acceptance of retiral benefits does not extinguish his claim against the employer. Payment of retiral benefits is an obligation cast on the employer and the workman is not supposed to refuse to accept retiral benefits unless in

peculiar set of circumstances. So also, failure of the petitioner in preferring an appeal before the employer would not oust the jurisdiction of the Conciliation Officer. When the petitioner has raised a dispute with regard to the punishment awarded to him and has raised certain issues in connection with such punishment, the Conciliation Officer has to conciliate between the parties and if the conciliation fails, he is mandated by law to submit his failure report. It is then left to the appropriate Government to decide whether, the dispute needs to be referred to the Tribunal for adjudication. Respondent No.2, therefore, could not have refused to admit the dispute raised by the petitioner in conciliation, in the facts and circumstances of this case.

12. In my view, in the light of Sections 10 and 12 of the Industrial Disputes Act, 1947, the Conciliation Officer has to submit a failure report. He cannot conclude that there is no dispute existing only because the employee has superannuated from service or has accepted his retiral dues.

13. In view of the above, this Writ Petition is partly allowed and the impugned order dated 30.03.2019 delivered by respondent No.2 is quashed and set aside with the following directions :-

(a) If respondent No.3 has not admitted the dispute in conciliation, it is hereby ordered that the demand raised by the petitioner shall be deemed to have been admitted in conciliation and an entry to this effect shall be made by him in his records, within two weeks.

(b) After following the prescribed procedure, Respondent No.3 would submit a failure report to the appropriate Government within four weeks.

(c) Needless to state, the appropriate Government shall consider the failure report and if he finds that an industrial dispute exists and the grievance raised by the petitioner was never raised earlier and needs adjudication, he may pass an appropriate order for referring the dispute to the Tribunal.

kps

(RAVINDRA V. GHUGE, J.)