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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13.04.2023

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W.P.(C) 3098/2012

VIJAY KUMAR JHAMB

..... Petitioner

Through: Mr. Piyush Sharma, Mr. Shivam
Dubey, Mr. Anuj Sharma, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Rajesh Gogna (CGSC) alongwith
Ms. Priya Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition preferred by the workman under Article 226 of the Constitution of India seeks quashing of the order dated 17.12.2011 passed by the respondent under Section 12(5) of the Industrial Disputes Act (ID Act). Vide the impugned order, the respondent, the appropriate Government acting through the Regional Labour Commissioner has declined to refer the dispute raised by the petitioner for adjudication before the Industrial Tribunal.

2. The brief factual matrix necessary for adjudication of the dispute may be first noted. The petitioner joined the services of the State Bank of India on 10.04.1981 as a Clerk and was removed from service vide order dated 24.11.2004 pursuant to *ex parte* disciplinary proceedings held against him. As the petitioner had rendered more than 20 years of service, he applied to

the bank for release of pension on the ground that he having submitted his resignation on 10.03.2004, he was entitled to pension. Upon receiving no response thereto, the petitioner through the All India Bank Staff Association raised a claim before the Assistant Labour Commissioner.

3. In the conciliation proceeding, the bank took the plea that the petitioner was not entitled to pension under the applicable Pension Rules. As the bank opposed the petitioner's claim, the Assistant Labour Commissioner acting as the Conciliation Officer submitted a failure report, whereafter, the respondent passed the impugned order declining to refer the petitioner's claim for adjudication.

4. Being aggrieved, the petitioner has approached this Court by way of the present petition.

5. Learned counsel for the petitioner submits that the impugned order is wholly without jurisdiction as the Appropriate Government under Section 12(5) of the I.D. Act does not have the jurisdiction to adjudicate qua the rival stands taken by the parties. He submits that the Conciliation Officer as also the Appropriate Government exercise a very limited jurisdiction and all that they are required to consider is as to whether a dispute exists or not between the parties. It is only when a dispute is wholly frivolous, can the government decline to make a reference. In the present case, once it was evident that the bank was refusing to entertain the petitioner's claim for pension, it was incumbent upon the respondent to refer the dispute to Industrial Tribunal. The respondent could not, under Section 12(5) of the I.D. Act, assume an adjudicatory function. He, therefore, prays that the impugned order be set aside and the respondent be directed to forthwith make a reference of the petitioner's claim to the Industrial Tribunal.

6. On the other hand, Mr. Gogna, learned counsel for the respondent seeks to defend the impugned order by urging that before making a reference under the Industrial Disputes Act, it is incumbent upon the Appropriate Government to consider whether a prima facie case was made out for adjudication. He submits that while exercising power under Section 12(5) of the I.D. Act, the Appropriate Government is not required to make a reference regarding every dispute and is expected to first consider whether a case for reference is made out or not. Unless the Government is satisfied that the claim is required to be referred for adjudication, it need not make any reference. However, it is required to furnish reasons for its refusal to refer the dispute to the Industrial Tribunal for adjudication. He, therefore, prays that the petition be dismissed.

7. Before dealing with the rival submissions of the parties, it would be appropriate to refer to para 7 of the claim petition preferred by the petitioner on 17.10.2008, the same reads as under:

“7.That in view of the facts stated above the dispute in respect of non payment of pension to the Workman, non acceptance of resignation of the workman for malafide reasons and instead of voluntary retirement, illegal removal of the workman from service, be re-opened. The contents of Annexures ‘A’, ‘B’ and ‘C’ be treated as part of the statement of claim of the Union on behalf of the workman.

The prayer made by the Union in the above Annexures i.e. “A’ and “B’ be accepted as the workman has been victimised and the management has followed unfair labour practice and did not implement the settlement.”

8. I may now also refer to the relevant extract of the impugned order

which reads as under:

“I am directed to refer to the Failure of Conciliation Report No. ALC 117 SS RKM dated 08/01/2010 from the Assistant Labour Commissioner (Central, New Delhi received in this Ministry on 16/04/2010 on the above mentioned subject and to say that, prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons:

Shri Vijay Kumar Jhamb is not entitled for Pension as per Pension Rules applicable in the Bank He has been removed from Service after issue of charge sheet for his unauthorized absence.”

9. At this stage, it may also be appropriate to refer to Clause (c) & (d) of the Section 10(1) of the I.D. Act which deals with the power of the Government to refer a dispute to the Labour Court/Tribunal for adjudication.

The same read as under:

“Section 10(1):

10. Reference of disputes to Boards, Courts or Tribunals.-

(1)³ Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--

(a) xxx

(b) xxx

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided....xxx”

10. I may now also refer to Section 12(5) which deals with the duties of the Conciliation Officer and the action required to be taken by the

Appropriate Government on the report submitted by the Conciliation Officer. The same reads as under:

“Section 12(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, 2 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 therefore.”

11. Having considered the submissions of the parties and perused the impugned order, what needs to be noted at the outset is that the respondent itself was not certain as to whether or not a case was made out for adjudication of the petitioner's claim. This is evident from the fact that the impugned order records that the respondent was of the prima facie opinion that the dispute was not fit for adjudication. In my considered view, once the respondent itself was not sure as to whether the petitioner's claim was justified or not, it ought to have referred the case for adjudication to the Industrial Tribunal so as to enable the parties to lead evidence in support of their respective stands.

12. Even otherwise, it is well settled that even though under Section 10 of the I.D. Act the Appropriate Government is required to consider whether a dispute exists or is apprehended, the same however, does not imply that the Government should take upon itself the task of adjudicating the dispute on merits. It is only when the claim is found to be wholly frivolous that the Government can refuse to make a reference. However, this refusal should be only in extraordinary cases and not in a case like the present where the Government itself was only of the prima facie opinion that no case was

made out. Under Section 10 of the I.D. Act, the Appropriate Government is only required to form an opinion as to whether a dispute exists or not.

13. In this regard, reference may be made to the decision in ***M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, (1985) 2 SCC 103*** wherein the Apex Court emphasised that it is the province of the Industrial Tribunal to decide disputed questions of fact and the Appropriate Government should not come to a unilateral decision without any evidence being led regarding the claim sought to be raised. The relevant extracts of the said decision read as under:-

“5. We have considered the rival contentions raised before s. The High Court apparently has relied upon the following passage in Bombay Union of Journalists v. State of Bombay [AIR 1964 SC 1617 : (1964) 6 SCR 22 : (1964) 1 LLJ 351 : (1964-65) 26 FJR 32] :

“But 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(1) 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.”

We find that the approach made by the High Court was wrong and the reliance on the above passage on the facts of this case, is misplaced and unsupportable. This Court had made it clear in the same judgment in the sentence preceding the passage quoted above that it was the province of the Industrial Tribunal to decide the disputed questions of fact.

“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.”

Therefore, 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 Government to determine whether dispute “exists or is apprehended” and then refer it for adjudication on merits. The demarcated functions are (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 perverse 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.

6. Same is the case with the conclusion arrived at by the High Court accepting the stand of the State Government that the employees were not entitled to the Chambal

allowance as the same was included in the consolidated pay. This question, in fact, relates to the conditions of service of the employees. What exactly are the conditions of service of the employees and in what manner their conditions of service could be improved are matters which are the special preserve of the appropriate Tribunals to be decided in adjudicatory processes and are not ones to be decided by the Government on a prima facie examination of the demand. This demand again can never be said to be either perverse or frivolous.

7. 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. Government should be very slow to attempt an examination of the demand with a view to decline reference and courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory.”

14. When the facts of the present case are considered in the light of the aforesaid decision, I have no hesitation in holding that the respondent had overstepped its jurisdiction in opining that the petitioner was not entitled to any pension under the Pension Rules of the bank. The respondent has failed to appreciate that it was the petitioner's specific case that he had voluntarily resigned from service with effect from 01.05.2004 but was thereafter malafidely removed from service on 24.11.2004. Furthermore, despite his removal from service he would still be entitled to pension having rendered more than 20 years in service. This stand of the petitioner, in my view could not have been simply rejected by the respondent on a prima facie opinion

and that too without granting him any opportunity to lead evidence before the learned Tribunal.

15. For the aforesaid reasons, the impugned order being wholly unsustainable is accordingly set aside. The matter is remanded back to the respondent, who will forthwith make a reference of the disputes raised by the petitioner so that the same can be adjudicated by the competent Industrial Adjudicator without any further delay.

(REKHA PALLI)
JUDGE

APRIL 13, 2023

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