

Engineering Staff Union and anr. Vs. the State of Bombay and anr.

Engineering Staff Union and anr. Vs. the State of Bombay and anr.

SooperKanoon Citation : sooperkanoon.com/343740

Court : Mumbai

Decided On : Nov-26-1958

Reported in : (1959)61BOMLR1347

Judge : K.K. Desai, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1)

Appeal No. : Misc. Petn. No. 181 of 1958

Appellant : Engineering Staff Union and anr.

Respondent : The State of Bombay and anr.

Advocate for Def. : R.J. Joshi, Adv.

Advocate for Pet/Ap. : Phadke, Adv.

Judgement :

ORDER

(1) This is petition under Art. 226 of the Constitution whereby the petitioners have prayed for a writ of mandamus ordering modification of an order of reference dated january 29, 1958 made under S. 10(1)(d) of the Industrial Disputes Act so as to substitute the words 1st January 1954 and 1st February 1956 at appropriate portions in place of the words 1st Febuary 1957 contained in that order of reference. The relief claimed as in prayer (b) is not pressed before me.

(2) The short relevant facts as appearing in the petition are that in the 1st week of February 1957 the first petitioners who are a registered Union as representing the employees of the 2nd respondents put forward a demand for increase of dearness allowance with retrospective effect as from January 1st 1954. As there was taken before the conciliation Officer in conciliation proceedings. The conciliation Officer made a report under S. 12(4) of the Industrial Disputes Act and the 1st petitioners thereafter requested the Government to make a reference of the dispute for adjudication by Industrial Tribunal.

(3) The Government made the reference order in question before me dated 29-1-1958 under the provisions of section 10 of the Act. The Government by its letter dated 29-1-1958 informed the 1st petitioners of inter alia as follows:

That Government does not propose to refer it (dispute) to a Tribunal for adjudication under sub section (5) of the said section 12 as the same has been referred to the Tribunal under Government Order,..... Dated 29th January 1958.

I am to add that as the dispute was raised on 1-2-1957. the retrospective effect has been changed to 1-2-1957.

(4) The whole of the contention in the petition and the arguments before me related to the change on the demand in connection with dearness allowance. The petitioners case is that their demand was for increase retrospectively from 1-1-1954 and the reference has been made for such increase only from February 1957. and the reference is by reason of that alteration in dates for the reasons mentioned in the petition liable to be modified by court. Having regard to that contention it is first necessary to quote in detail the industrial dispute in question or the demand made by the petitioners and also the dispute mentioned in the order of reference in question and thereafter to summarise the contentions mentioned in the petition.

(5) The demand put forward and/or industrial dispute was as follows:

'Dearness Allowance: The existing dearness allowance payable to the monthly rated employees of the company at its Wadala establishment should be revised and increased retrospectively from 1st January 1954 as under.

Pay Slab	D.A. at cost of living indices	Variation in %	per 10311 to 320 points movement	in	index number
----------	--------------------------------	----------------	----------------------------------	----	--------------

1 to 100	80% of basic pay or revised textile scale for 31 days whichever is higher.				
8%1 to 200	40% - do - 4%				
1 to 300	20% - do - 2%				
1 to 400	20% - do - 2%				

(b) Increase in dearness allowance if and when wanted to the monthly rated staff of the Company its Wadala establishment should also be granted Shri. P. S. Pandit, retrospectively from 1st January 56.

(6) The relevant part of the order of reference appearing in the Bombay government Gazette, 1960 D.F./10. dated February 13, 1958 part I-L page 938 runs as under.

Whereas the Government of Bomaby is of opinion that industrial dispute connected with the matter specified in the schedule appended thereto exists between the Indian Hume Pipe Co., Ltd., Bombay and the workmen (Monthly rated Staff) employed under it at its Wadala factory:

Now, therefore, in exercise of the powers conferred by c. (d) of sub-s (1) of S. 10 of the [Industrial Disputes Act, 1947](#) (XIV of 1947) the Government of Bombay is pleased to refer the said dispute for adjudication to pleased to refer the said dispute for adjudication to the Tribunal consisting of Shri. Meher constituted under Government Notification Labour and Social Welfare Department, No. IDA. 1157(b) dated 12-3-1957.

SCHEDULE

Dearness Allowance: The existing dearness allowance payable to the monthly rated employees of the company at its Wadala establishment should be revised

and increased retrospectively from 1st February 1957 as under:

slab	Dearness allowance at cost of	Variation in per cent per	10living indices	311 to
320	points	movement	in	index
number				

to 100	80 per cent of basic pay or	revised textile scale for 31	days whichever is	
	higher. 8 per cent.	40 per cent -do-	101 to 200	20 - do - -do-
				4 per cent.
			201 to 300	
				20 - do - -do-
				2 per cent.
			Over 300	20 - do - -do-
				2 per cent.

(b) Increase in dearness allowance, if and when granted to the monthly rated staff of the company at its Wadala establishment would also be granted to Shri. P. Pandit, retrospectively from 1. 2. 1957.

(7) It is contended in the petition that (i) the demand is made in respect of retrospective effect has not been referred to adjudication, (ii) the reason given by the Government ofr not making a reference under section 12(5) of the Act is non existent and it is simply not true, (iii) simply by having recourse to the provisions of S. 10(1)(d) of the Industrial Disputes Act the Government cannot alter the character of the dispute had been subject matter of conciliation proceedings it was not proper for the government to make a reference under section 10(1)(d) of the Act, (iv) if the Government was satisfied that there was a case for the same reference must be made under S. 10(5) of the Act, (iv) a reference under S 10(1)(d) of the Act was only a colourable device for the purpose of avoiding to make a reference of the dispute as raised by the petitioners and (vii) that the modification of the demand relating to dearness allowance made by the Government amounted to an adjudication of the dispute with regard to its aspect of retrospective effect and it was not competent or open to the Government ot pronounce its judgment on the propriety or justifiability of the workmens demand. That being the function of an Industrial Tribunal only.

(8) Those are the contentions raised in the petition. I have recited those contentions to clarify that the same are raised placing reliance upon the provisions of section 12 of the act and that one of them has been pressed before me by Mr.

Phadke, presumably because by reason of the recent decisions of this court it is impossible to sustain the same. He has, however, relying upon the provision of S. 10(1)(d) of the Act made certain contentions and I have allowed him to do that inasmuch as it was desirable that there should be no grievance that the whole of the case of the petitioners was not allowed to be argued before me.

(9) Mr. Phadke contends that in the matter of a reference of dispute by the Government under S. 10(1)(d) of the Act the dispute as contained in the demand made on behalf of the employees must be wholly referred to the Tribunal. He says that Government cannot modify the demand made and make a reference in respect of the modified demand or dispute, He says that the Government has no right to impose its own opinion on the Tribunal as the government wants to act under S. 10(1)(d) of the Act, the government is bound to make a reference in respect of the whole of the demand and or dispute raised between the employer and the employee. He has in developing those contentions laid emphasis on the fact that it was patent on the record before the conciliation officer and in the report of the Conciliation Officer and otherwise also that the demand of the petitioners was for revision of dearness allowance retrospectively from January 1st 1954. He says that no rational person should have formulated an opinion that that demand was for increase retrospectively from 1.2. 1957 only. The opinion which the government should have formed and must have formed regarding the dispute raised could be that the increase was demanded retrospectively from 1st January 1954. The opinion formed by the Government was entirely unreasonable and irrational and, that the court is entitled to examine that opinion and make a finding that it was arbitrary and capricious and that the dispute forming that subject matter of reference should have been for increase retrospectively from January 1st 1954. He further contends that having regard to the arbitrary and capricious opinion as formed by the government as patent on the order of reference I should come to the conclusion that Government has not applied its mind at all or has for its own reasons misconceived its jurisdiction under section 10(1)(d) and has for collateral purposes attempted to impose its own opinion in respect of a matter which under the scheme of the Act must be decided by a Tribunal and was within the exclusive jurisdiction of a Tribunal. These contentions I will examine with reference to the provisions of S. 10 of the Act, relevant parts thereof run as under:

10(1) 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) refer the dispute to a Board X X X X X or with

(b) refer any matter appearing to be connected with or relevant to the dispute to a court of inquiry or;

(c) refer the dispute or any matter appearing to be connected with or relevant to the dispute to Tribunal 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 2nd schedule or the 3rd schedule to a Tribunal for adjudication.

There are provisions to this section which are for the purpose of this case unnecessary to quote.

(10) Now it is clear on the language of the section that the decision and the opinion of a reference is to be formed by the Government. That decision and opinion is administrative and is entirely left to the subjective decision and opinion of the government. The court cannot impose its opinion on the Government. It is also clear having regard to the use of the following words in sub sections (b)(c) and (d) that the Government is not bound to refer the whole of the dispute or the dispute in all its aspects as raised to a Tribunal or a court. The words to which reference should be made are matter appearing to be connected with or relevant to the dispute, the dispute or any matter appearing to be connected with or relevant to the dispute. Admittedly the order in question is made under the provisions of section 10(1)(d) of the Act. The aforesaid words give and or confer jurisdiction and power on the government to make a reference in respect of any matter connected or any relevant part of a dispute and or the whole of the dispute. If it was intended that the government was bound whilst making a reference under s. 10 to refer the whole of the dispute and or the whole of the demand to a court or a Tribunal the aforesaid words would not have been used in the section and would have been inappropriate altogether. These words are in my view indicative of the clear

intention of the legislature to leave the whole of the matter of reference under S. 10 to the subjective decision and opinion of the government. There is no obligation on the Government under the provisions of this section while making a reference to a court or a tribunal to make a reference of the whole of the dispute and or of the whole demand made. On the contrary the matter is left at large.

(11) That being the true construction of this section the whole of the argument raised on behalf of the petitioners appears to be entirely mis conceived and not sustainable. The Government was whilst deciding the reference in this case making a reference in respect of the dispute raised but with reference to a smaller and shorter period as regards the retrospective effect in respect of the demand made for increased earned allowance. The Government was at its discretion entitled to restrict the reference of the whole of the demand made by the petitioners as is contended by Mr. Phadke. I negate the contention of Mr. Phadke that the government had not applied its mind and had misconceived its jurisdiction while making a reference only for a smaller period.

(12) Mr. Phadke has cited before me art. 110 from Vol. XI Halsbury's Law of England (3rd Edition) relating to the jurisdiction of the court to examine administrative decisions of executive authority. Mr. Phadke has also cited in the same connection the decision in the case of *Brundaban Chandra v. State of Orissa* AIR 121 at p. 126. The propositions made in these authorities are unquestionable well established. The question of my going into details and examining the administrative decision of the government in this case has in my view not arisen at all. I have therefore not dealt with these authorities in detail in this case.

(13) Having regard to my aforesaid findings the petition must fail. The petition is dismissed with costs. Rule discharged.

(14) Petition dismissed.