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Court : Mumbai

Decided On : Oct-23-1992

Reported in : (1994)IILLJ573Bom

Judge : Ashok Agarwal, J.

Acts : [Industrial Disputes Act, 1947](#)

Appeal No. : W.P. No. 2115/1992

Appellant : Association of Engineering Workers

Respondent : Permanent Magnets Ltd. and ors.

Advocate for Def. : M.S. Naik and ;S.M. Dixit, Advs.

Advocate for Pet/Ap. : N.M. Ganguli, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Ashok Agarwal, J.

1. The order dated 6th December, 1991 passed by the Assistant Commissioner of Labour refusing to admit in conciliation a dispute raised by the petitioner is impugned in the present petition.

2. The Assistant Labour Commissioner has found that the worker Shri Mohan R. Kadam, who is represented by the petitioner-union has resigned by writing in his own handwriting in Marathi. The resignation is accepted by the first respondent-company on the very day of the resignation i.e. on 30th April, 1990. The workman is relieved from duty by the Management on the same day. The complaint lodged by the workman with the Borivli Police Station is not specific. The workman has not mentioned what type of pressure was brought on him for resignation. He has not mentioned who forced him to resign.

3. The material produced on record further shows that the legal dues payable to the workman are sent to him by a cheque dated 1st June, 1990 which is over a month after the date of resignation. The cheque has been encashed by the workman thereafter without murmur. Vide his letter dated 13th July 1990 written in his own hand in Marathi the workman requested the Company that from the amount of legal dues payable to him a particular amount may be recovered and adjusted towards the payment of loan taken by him from a particular credit society. The Company accordingly adjusted and made payment of out-standing loan. It is thereafter that the petitioner-union has raised the present dispute on behalf of the workman.

4. In my judgment, this is a clear case of voluntary resignation. The present demand appears to have been raised by the petitioner-union as an after-thought. It has been held by this Court in the case of East Asiatic and Allied Companies, Bombay and Sheike (B.L.), reported in : (1961)ILLJ162Bom as follows:(pp-164-165)

'Section 12(1) provides that where an industrial dispute exists or is apprehended, the conciliation officer may hold conciliation proceedings in the prescribed manner. It further provides that where the dispute relates to a public utility service and a notice under Section 22 has been given, the conciliation officer shall hold conciliation proceedings. This provision draws a clear distinction between a dispute which relates to a public utility service and any other kind of industrial dispute. The use of word 'may' in so far as the latter kind of disputes are concerned, makes it abundantly clear that the legislature has invested the

conciliation officer with the discretion whether to enter upon conciliation in regard to such disputes or not. Further it is the duty of the conciliation officer to satisfy himself before undertaking conciliation proceedings as to whether the grievance which the union has put forward is genuine or not. Since the law confers a discretion upon the conciliation officer whether he should enter upon conciliation or not, it is only right and proper that he should satisfy himself by all means available to him about the propriety of undertaking conciliation. If for satisfying himself in this respect, he holds preliminary discussions with the representatives of the parties and even conveys proposals made by one of the parties to the other, it could not be said that he has commenced conciliation proceedings. He could do so to satisfy himself as to whether there is any genuine dispute and whether it is a matter in which he should undertake conciliation.'

5. In my view, the impugned order is just and proper and does not call for an interference.

6. Shri Ganguli the learned Counsel appearing for the petitioner has placed reliance on the case of V. Veerarajan and Ors. v. Government of Tamil Nadu and Ors. reported in : (1987)ILLJ209SC In that case it has been held as follows (p.213) :

'If the dispute in question raises a question of law the appropriate Government should not purport to reach a final conclusion on the said question of law because that would normally lie within the jurisdiction of the Industrial Tribunal. 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''.

7. In my view, the above case does not purport to lay down that each and every dispute, no matter how frivolous, has to be admitted in conciliation and has to be referred to the Tribunal for adjudication. In any event, I do not find that this is a fit case to exercise my discretionary jurisdiction under Article 226 of the Constitution of India.