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Court : Karnataka

Decided On : Sep-15-1994

Reported in : ILR1994KAR3014; 1994(4)KarLJ654; (1995)ILLJ365Kant

Judge : Kumar Rajaratnam, J.

Appeal No. : W.P. No. 26994 of 1993

Appellant : Gurumurthy

Respondent : State of Karnataka

Judgement :
ORDER

Kumar Rajaratnam, J.

1. This petition is taken up for final disposal by consent of both the parties.

2. The State Government has rejected the Reference at Annexure-F on the ground that there is delay of six years.

3. The learned Counsel for the petitioner submits that there is no delay as set out in paragraph-4 of his petition submitted to the Government at Annexure-C. He also brings to my notice that at paragraph-4 of Annexure-C he has stated the reasons for the delay, if any. He has also filed a rejoinder to Annexure-C which is at Annexure-E. He has stated in Annexure-E that there is no intentional delay in

raising the dispute.

4. Mr. P. D. Vishwanath, learned Counsel for the second respondent brought to my notice the Judgment of Punjab & Haryana High Court in Prem Singh and Ors. v. Labour Commissioner Punjab Chandigarh and Ors. 1994 I CLR 1110 wherein the High Court has held that the delay can be one of the grounds for rejecting the Reference, whereas, the learned counsel for the petitioner relied on a Decision of the Supreme Court in M/s. Western India Watch Co. Ltd. v. The Western India Watch Co. Workers Union and Ors. AIR 1970 SC 11205 Para-9 of the said judgment reads thus :-

'In the State of Madras v. C. P. Sarathy, : (1953)ILLJ174SC this Court held on construction of Section 10(1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible. In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute. [cf. Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal : (1968)ILLJ834SC . Such a view has been taken by the High Courts of Andhra Pradesh, Madras, Allahabad, Rajasthan, Punjab and Madhya Pradesh (See G. Gurumurthy v. K. Ramulu (1958) 1 Lab LJ 20 = (AIR 1958 Andh Pra 276), Vasudeva Rao v. State of Mysore, (1953) 2 Lab LJ 717 (Mys.), Rawalpindi Victory Transport Co. (P) Ltd. v. State of Punjab (1964) 1, Lab LJ 644 (Punj.), Champion Cycle Industries v. State of U.P. : (1964)ILLJ724All , Goodyear (India) Ltd. Jaipur v. Industrial Tribunal, and Rewa Coal Fields Ltd. v. Industrial Tribunal, Jabalpur, : AIR 1969 MP174 . The reason given in these

decisions is that the function of the Government either under Section 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as res judicata applicable to judicial Acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make reference it does not exercise its power; on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and act upon such beliefs, does not affect the jurisdiction of the Government to make the reference.'

5. The learned Counsel for the petitioner also relied on the judgment of this Court in L. Narayanappa v. State of Karnataka and Anr. W.A. No. 1219 of 1990 DD 31.7.1991 wherein this Court has held that it is not open to the Government to reject the Reference either on the ground of delay or that the enquiry was not held properly etc. because these functions are within the domain of the adjudicating authority on a Reference. Taking all these circumstances into consideration I am of the view that the Government does not pass a Judicial or a quasi-judicial order while rejecting the Reference and the Government cannot refuse Reference on the ground of delay alone. I am respectfully bound by the Division Bench Decision of this Court (W.A. No. 1219 of 1990 DD 31.7.1991) referred to above. However, in this particular case the reasons given for the delay has not been properly explained by the Government. In these circumstances there will be a Writ of Certiorari quashing Annexure-F and a direction directing the Government to reconsider the matter afresh in accordance with law. The Government will pass appropriate orders within a period of two months from the date of commencement of this Order. Petition is disposed of accordingly. There will no order as to costs.