

P. Mallesha Vs. Union of India and Another

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Court : Karnataka

Decided On : Mar-19-1998

Reported in : [1999(81)FLR324]; 1998(4)KarLJ418; (1999)IILLJ423Kant

Judge : Ashok Bhan and;Mohamed Anwar, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1); [Constitution of India](#) - Articles 226

Appeal No. : Writ Appeal No. 9744 of 1996

Appellant : P. Mallesha

Respondent : Union of India and Another

Advocate for Def. : Sri R. Gururajan, Adv.

Advocate for Pet/Ap. : Sri K. Subba Rao, Adv.

Judgement :

Ashok Bhan, J.

1. This appeal is directed against the order of the Single Judge confirming the action taken by the appropriate Government refusing to make reference to the Labour Court under Section 10(1)(c) of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as the 'Act') on the ground that the appellant-workman had

not put in 240 days of service.

2. Appellant filed a petition with the appropriate Government for making a reference under Section 10 of the Act for referring the dispute between him and his employer to Labour Court for adjudication. Management in the conciliation proceeding before the concerned authority took the objection that the workman ceased to attend the office from February 1986 and that he has not put in 240 days of service. Conciliation Officer came to the conclusion that there was no material to show that the worker had put in 240 days of service. In the circumstances, Conciliation Officer submitted a failure report. Acting on the report, the appropriate Government came to the conclusion that there is no subsisting dispute to be referred as there was no evidence to show that the worker was qualified for any relief under the Industrial Disputes Act. The appellant filed a writ petition challenging the action of the respondents on the plea that the Government itself could not delve into the merits of the dispute which was the exclusive jurisdiction of the Labour Court. Learned Single Judge did not accept the contention of the appellant and rejected the writ petition. It was held that it is for the authorities to prima facie consider whether the claim made by the worker is true or not. The Court cannot interfere in the discretion of the authorities with its orders. Apart from that the writ petition was dismissed on the ground that the workman had failed to give any explanation for delay in approaching the authorities. The termination took place in 1986 and the dispute was raised by the workman in the year 1993-94.

3. The order of the learned Single Judge cannot be sustained. It has been held time and again by the Supreme Court of India as well as the different High Courts that the appropriate Government cannot delve into the merits of the dispute and take upon itself the determination of the lis which is in the exclusive jurisdiction of the Labour Court/Industrial Tribunal. Reference may be made to *Ram Avtar Sharma and Others v State of Haryana and Another*:

'If the Government performs an administrative act while either making or refusing to make a reference under Section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in

excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. Therefore, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter'.

4. The question regarding delay has not been considered by the Government and the reference was not declined on the ground of delay. The additional point taken by the learned Single Judge regarding delay in making the petition under Section 10 could not under the circumstances of the case be taken into account.

5. For the reasons stated above, the order of the learned Single Judge is set aside, the appeal is accepted.

6. The writ petition is allowed. A mandamus be issued to respondent 1 (appropriate Government) to reconsider the matter afresh and pass appropriate orders in accordance with law keeping in view the observations made above.

No costs.