

Mudhavan Kutty Vs. Union of India (Uoi)

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Court : Kerala

Decided On : Apr-15-1982

Reported in : 1982(II)KLT212

Judge : Khader, J.

Appellant : Mudhavan Kutty

Respondent : Union of India (Uoi)

Judgement :

Khader, J.

1. A clerk who has been dismissed from service of the third respondent herein seeks to quash an order Ext. P3 passed by Assistant Labour Commissioner (Central), Ernakulam, the second respondent herein.

2. The petitioner joined service in the year 1961 and while working as cashier, he is alleged to have misappropriated money belonging to the bank and consequently he was dismissed from service after conducting a domestic enquiry. It is alleged that he made several representations to the bank against his dismissal and finally as he did not get any reply from the bank he filed an application before the Government of Kerala under Section 10 of the Industrial Disputes Act. As no order was passed on his application, the petitioner moved this Court in O.P. No. 898/80 and in pursuance of a direction of this Court the Government of Kerala disposed of

the application of the petitioner stating that he has to move the appropriate authority under the Industrial Disputes Act. Thereafter the petitioner filed an application Ext. P2 before the Assistant Labour Commissioner, Ernakulam, raising a dispute regarding his dismissal from the service of the third respondent. The Assistant Labour Commissioner after hearing the petitioner and the representative of the employer passed Ext. P3 order stating that there is no scope for any formal proceedings under the Industrial Disputes Act over this matter that took place as early as 1972.

3. Attacking this order, the counsel for the petitioner submitted that after having initiated proceedings under the Industrial Disputes Act, 1947, hereinafter called the Act, the Assistant Labour Commissioner has no jurisdiction to pass an order in the nature of Ext. P3; that under the statutory provisions of the Act he is bound to make a report under Section 12(4) of the Act; that this a clear case where he has refused to exercise the statutory jurisdiction vested in him and that, therefore, this order should be set aside and he should be directed to proceed in accordance with the provisions in Section 12 of the Act.

4. The learned advocate appearing for the third respondent strongly opposed this petition mainly on the ground that there has not been any conciliation proceedings initiated by the second respondent; that he is not, therefore, bound to make a report under Section 12 of the Act; that there has been considerable lapses on the part of the petitioner ; that he kept quiet for a considerably long period without raising his little finger against the order of dismissal; that, therefore, the doctrine of sitting back will be applicable to the case and that on this short ground this writ petition should be dismissed.

5. The order that is sought to be quashed in this case is Ext. P3 dated 10-3-1981 and this petition was filed before this Court on 18-8-1981. The petitioner has stated in this original petition the fact which led to the filing of the same before this Court, He has specifically referred to therein that although he had made various representations to the third respondent against the wrong done to him, he did not get a reply to any of the representations made by him. The counsel for the petitioner pointed out that these facts stand unchallenged and the third respondent

has not filed any counter affidavit denying or controverting the averments in petition. In these circumstances, the doctrine of sitting back cannot have any application to the present case- Under Rule 10 of the Industrial Disputes (Central) Rule, 1957, where the conciliation officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein. It is seen from Ext. P3 that on the date fixed for hearing, the petitioner as well as the representative of the third respondent were present, and they were heard on their respective contentions. The definition of the word 'conciliation proceedings' under the Act is wide enough to include any proceedings held by a conciliation officer or Board under the Act, It is not disputed that for all purposes at the material time, the second respondent was acting as a conciliation officer. The petitioner has been served with a notice which was shown before this Court and that shows that a copy of the representation of the petitioner was given to the bank and a notice was issued to the Chairman of the bank. It is only when the conciliation officer considers it necessary to intervene in the dispute that notice has to be issued as prescribed under Rule 10. That has been done in this case. Under Rule 10-A parties can submit written statements if they so desired. Exhibit P3 shows that the representative of the third respondent submitted a brief written note stating that the dismissal of the workman was proper and there was no case for taking him back into service. All these clearly show that the second respondent had initiated conciliation proceedings in accordance with provisions of the Act. Merely because he chose to describe Ext. P3 as a record of note of discussions held before him in the dispute between the petitioner and the bank, the proceedings which he initiated under the Act cannot cease to be conciliation proceedings as contemplated under the Act, So also the statement in Ext. P3 that there is no scope for conciliation proceedings has no substance in the context. That apart, a conciliation officer is not competent to decide, the various points at issue between the opposing parties. All that he can do is to try to persuade the parties to come to a fair and amicable settlement Under the Act, he is given power to 'do all such things as he thinks fit for the purpose of inducing the parties to come

to a fair and amicable settlement of the dispute'. The functions and duties of a conciliation officer are crystal clear from the provisions in Section 12 of the Act. Although wide powers are given under this section to a conciliation officer depending upon his resourcefulness and power of persuasion, to try to induce and persuade the parties to come to a fair and amicable settlement of the dispute, he has no power to decide anything at all. After having commenced the conciliation proceedings under Section 12 of the Act, the conciliation officer exceeded his power and acted beyond his jurisdiction by passing Ext. P3 order. No doubt the petitioner was dismissed as early as 1972. The laches or lapses on his part, if any, are all matters to be considered by the appropriate Government on receipt of the report from the conciliation officer as contemplated under the Act. The provision in Sub-section (4) of Section 12 of the Act relating to the sending to the Government a full report as contemplated thereunder is mandatory in nature. Having failed to bring about or arrive at a settlement of the dispute, it was the bounden duty of the conciliation officer, the second respondent herein, to send to the appropriate Government a full report as mandatorily enjoined under Section 12(4) of the Act setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at. Thereafter by virtue of the provisions in Section 12(5) it is for the appropriate Government to consider whether it should make a reference or refuse to make a reference. By disposing of the conciliation proceedings on the close of the investigation by passing Ext. P3 order the second respondent has not only failed to perform the statutory function vested in him under Section 12(4) of the Act but has also exceeded his powers under Section 12(1) of the Act.

6. In the result, this original petition is allowed. Ext. P3 order is set aside and the second respondent is directed to restore the proceedings in question to his file and dispose of the same afresh in accordance with provision in Section 12 of the Act and in the light of this judgment. No costs in the circumstances.