Sultan Singh vs State Of Haryana & Anr on 12 December, 1995

Equivalent citations: 1996 AIR 1007, 1996 SCC (2) 66, AIR 1996 SUPREME COURT 1007, 1996 (2) SCC 66, 1996 AIR SCW 485, 1996 LAB. I. C. 915, (1996) 1 CTC 169 (SC), 1996 SCC (L&S) 751, (1996) 1 SERVLR 598, (1996) 1 LABLJ 879, (1996) 1 LAB LN 439, (1996) 1 SCJ 301, (1996) 88 FJR 279, (1996) 73 FACLR 955, (1996) 2 SCT 491, (1996) 32 ATC 847

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
SULTAN SINGH

Vs.

RESPONDENT:
STATE OF HARYANA & ANR.

DATE OF JUDGMENT12/12/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 1007 1996 SCC (2) 66
JT 1995 (9) 556 1996 SCALE (1)9

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Two questions arise in this appeal, namely,(1) whether the State should hear the respondent/employer before making a reference on a second representation under Section 10 of Industrial Disputes Act, 1947 (for short, `the Act') since it was rejected on an earlier occasion; and (2) whether there is an order of reference by the State Government so as to entitle the appellant to

have the dispute adjudicated by the tribunal.

The facts are not in dispute. Way back in 1955, the appellant had joined the respondents as a workmen (Khalasi). He was promoted on September 6, 1972 as a tape-reader. He was served with a chargesheet on June 28, 1979 and his services were terminated on August 9, 1979. On June 30, 1981, he made a demand on the respondent/employer for reinstatement which was rejected. Thereafter, he made an application for reference under Section 10 of the Act to the State Government which was rejected by order dated October 20, 1981. The appellant again made a representation on March 25, 1982 and the Minister made a note on the representation directing to make a reference. However, since no communication was received by the appellant, he wrote a letter to the Labour Commissioner, Haryana, on April 26, 1984 but to no avail. He then filed the writ petition. By order dated August 6, 1984 in CWP No. 2885/84, the High Court dismissed the writ petition.

The first question is whether the State should give a hearing to the employer before making a reference on second application, since on an earlier occasion, it was rejected. Section 10(1) of the Act provides that where an appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing refer the dispute to named authorities. Section 12(5) of the Act postulates that on receipt and consideration of a report from the conciliation officer, if the Government is satisfied that there is a case for reference to the Board, Labour Court, Tribunal or National Tribunal, as the case may be, it may make such reference. Where the appropriate Government does not make such a reference it shall record reasons therefor and communicate to the parties concerned.

A conjoint reading, therefore, would yield to the conclusion that on making an application for reference, it would be open to the State Government to form an opinion whether industrial dispute exists or apprehended and then either to make a reference to the appropriate authorities or refuse to make the reference. Only on rejection thereof, the order needs to be communicated to the applicant. Nonetheless the order is only an administrative order and not a quasijudicial order. When it rejects, it records reasons as indicated in sub-section (5) of Section 12 of the Act. The appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on record. Being an administrative order no lis is involved. Thereby there is no need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference. Sub-section (5) of Section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference under Section 10(1). It enjoins to record reasons only when it refuses to make a reference.

The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative order and so is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to the employer nor to consider his objections not to hear him before making a reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on second application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference. The previous decision of

that Court relied on in the case at hand was wrongly decided.

The second question is whether, as a fact, reference has been ordered by the Government. It is seen that on the earlier occasion admittedly reference was rejected on the ground that the appellant had settled the matter with the employer. In the second application, the Minister made a note directing reference, but in the order communicated later to the appellant by the Labour Department, it was indicated that in view of the decision already taken, the Government did not consider it necessary to reconsider the decision already taken. In other words, they were of the opinion that there existed no industrial dispute. They declined to make reference under Section 10(1). Therefore, there is no reference, in fact, made to the appropriate Tribunal/Labour Court or Industrial Tribunal.

In these circumstances, we cannot give relief to the appellant, since there is no reference made by the Government. The appeal is disposed of accordingly. No costs.