IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2869 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
   YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
   NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO : NO

5. Whether it is to be circulated to the Civil Judge? : NO
   NO

SECRETARY

Versus

RAJUBHAI R JADEJA

Appearance:

MRS DAVAWALA for Petitioner
MR DEVNANI for MR MUKESH H RATHOD for Resp.No. 1
MR UM SHASTRI for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 29/02/2000

ORAL JUDGEMENT (Per B.C.Patel, J.)

The petitioner - Secretary, Ministry of Labour, Government of India - has filed this petition challenging the order made by the Central Administrative Tribunal, Ahmedabad Bench (hereinafter referred to as the Tribunal) in O.A. No.533 of 1998 on 25.8.1998.

2. The respondent No.1 herein, who was the applicant before the Tribunal, submitted that he was a casual labourer from 5.12.1983 and continued upto 11.3.1984. His services were terminated. Raising a contention that he had completed 240 days of service and his services were terminated in contravention of the Labour Laws, he raised disputes under the Industrial Disputes Act, 1947 before the Labour Enforcement Officer (Central), Rajkot for conciliation. Section 11 of the Industrial Disputes Act points out the procedure and powers of conciliation officers, Boards, Courts and Tribunals. Sections 12 refers to duties of conciliation officers. It is the duty of the conciliation officer to bring about a settlement of the dispute, to investigate the matter and has to strive for an amicable settlement of the dispute. In case no such settlement is arrived at, the conciliation officer has to send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute for bringing about a settlement thereof. He has to state the facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at. It is after this report, the Government, if satisfied, has to make a reference. A duty is cast where the Government does not make a reference to record the reasons thereof and to communicate the same to the parties concerned. It is required to be noted that in case of failure report, which is under the Industrial Disputes Act, the further proceedings may be initiated by the party aggrieved. Thus, the communication of failure report, though relating to service, cannot be said to be a matter which would attract the provisions contained in Section 15 of the Administrative Tribunals Act, 1985.

3. The respondent No.1 before the Tribunal, viz. the petitioner herein, vide letter dated 19.5.1998 informed the parties that the Central Government do not consider the case to be a fit case for reference for adjudication and indicated the reasons as under:

> "The workman has not put in 240 days service in 12 consecutive months. Further, the dispute has been raised belatedly without justifiable

reasons".

It is against this order refusing to make a reference to the Industrial Tribunal, the respondent No.1 herein - the applicant before the Tribunal approached the Tribunal. The Tribunal inter alia directed the concerned respondent to make a reference. The Tribunal observed as under in paragraph 6 of its decision:

" In this case, on the one hand, the first respondent has gone beyond its jurisdiction in refusing to refer this dispute for adjudication on the ground that the dispute has been raised after 14 years without any valid justification for the delay. The respondent No.1 has also gone into the merits of the case, which he is not expected to do."

As laid down by the Apex Court in the case of TELCO CONVEY DRIVERS MAZDOOR SANGH v. STATE OF BIHAR reported in AIR 1989 SC 1565, the Government while considering the question whether a reference should be made or not, cannot enter into the merits of dispute and determine the lis itself.

4. However, the question before us is, can the Tribunal exercising powers under Section 15 of the Administrative Tribunals Act direct the concerned respondent to make a reference? In the instant case, the question is whether making a reference or not making a reference to the Tribunal would attract the jurisdiction of the Tribunal or not. In our opinion, if the conciliation officer has made a report to the Government and the Government has decided not to make a reference, then, that order may be challenged by filing appropriate petition under Article 226 of the Constitution of India. So far as directions to the Government to make a reference is concerned, in our opinion, the Tribunal does not have the jurisdiction to direct the Government to make a reference. Even in a petition for issuance of a writ in the nature of mandamus, the High Court cannot constitute itself into a court of appeal from the authority against which the appeal is sought. The decision is required to be taken by the appropriate Government. In the case of TATA CELLULAR v. UNION OF INDIA (AIR 1996 SC 11), the Apex Court has pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be:

1) whether a decision-making authority exceeded its powers?

2) committed an error of law;
3) committed a breach of the rules of natural justice;
4) reached a decision which no reasonable Tribunal would have reached; or
5) abused its powers.

Professor Wade laid down the principle that where a public authority was given power to determine a matter, mandamus would not lie to compel it to reach some particular decision. The Apex Court in case of STERLING COMPUTERS LTD. v. M&N PUBLICATIONS LTD. [(1993) 1 SCC 445] pointed out that while exercising the power of judicial review, the court is concerned primarily as to whether there has been any infirmity in the decision-making process? In case of MANSUKHLAL V. CHAUHAN v. STATE OF GUJARAT [(1997) 7 SCC 622] in para 39, the Apex Court pointed out that when the sanction order is held to be bad, the case is to be remitted back to the authority for reconsideration of the matter to pass a fresh order of sanction in accordance with law. Therefore, in our opinion, the Tribunal has erred in directing the respondent to make a reference under the provisions contained in the Industrial Disputes Act.

5. However, looking to the facts and circumstances of the case, it would be just and proper for the petitioner before us to consider the Apex Court judgment in case of TELCO CONVEY DRIVERS MAZDOOR SANGH (supra) referred hereinabove and to reconsider the matter and thereafter to pass an appropriate order under the Industrial Disputes Act.

6. We hope that the petitioner shall take a decision within a period of one month from the date of receipt of the writ. With the above observations, we allow the petition. Order passed by the Tribunal at Annexure-A is quashed and set aside. Rule is made absolute with no order as to costs.

(KMG Thilake)
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