

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7436 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

TAMANNAKHAN M PATHAN

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 7436 of 2002
MR PH PATHAK for Petitioner No. 1
MR BIPIN I MEHTA for Respondent No. 1-2
MR MUKESH R SHAH for Respondent No. 1
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 31/03/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Pathak for the

petitioner; Mr. Bipin I. Mehta for respondent No.2 and Mr. M.R. Shah, learned advocate for respondent NO.1. In this petition, on behalf of respondent No. 2, affidavit in reply has been filed which is ordered to be taken on record.

Rule. Service of rule has been waived by Mr. B.I. Mehta, learned advocate appearing for respondent NO. 2 and Mr. M.R. Shah, learned advocate appearing for respondent No.1. In the facts and circumstances of the case and with the consent of the learned advocates for the parties, the matter is taken up for final hearing today itself.

In this petition, the petitioner has challenged the order passed by the Central Government dated 4th December, 2001 wherein, under section 12(5) of the Industrial Disputes Act, 1947, the Central Government has formed an opinion that as per the CCS Rules, the workman having criminal record and has, therefore, not referred the matter for adjudication. Learned advocate Mr. Pathak appearing for the petitioner has submitted that the petitioner has challenged the order of termination under section 22 and in the conciliation proceedings, failure report has been submitted by the conciliation officer and after receiving the report under section 12(4) of the Act, 1947, the Central Government has taken decision under section 12(5) of the Act and has rejected the request of the petitioner for referring the dispute for adjudication to the concerned tribunal. He submitted that for coming to the conclusion for not referring the matter for adjudication, the Central Government has decided the lis between the parties and for that, the Central Government has no jurisdiction to examine the merits of the matter. As a matter of fact, services of the petitioner were terminated by the management and for that, industrial dispute was raised which is subsisting and yet the Central Government has refused to refer the matter for adjudication only on the ground that the petitioner is having criminal record and the reference has therefore not been made by the Central Government and, therefore, present petition has been filed by the petitioner. Learned advocate Mr. P.H. Pathak appearing for the petitioner has submitted that initially, the petitioner approached the Central Administrative Tribunal but the Central Administrative Tribunal was of the view that the tribunal is not having the jurisdiction and, therefore, the petitioner has approached this Court by way of this petition.

Learned advocate Mr. Shah appearing for the

Central Government has submitted that this being the prima facie opinion of the Central Government under section 12(5) of the Act of 1947, this cannot be considered to be adjudication but the Central Government is entitled to form the prima facie opinion on the basis of the material placed before him and it does not amount to adjudication on merits but merely having prima facie opinion of the Central Government and, therefore, the order passed by the Central Government is perfectly legal and valid and no interference is required.

Learned advocate Mr. Mehta appearing for respondent No.2 has submitted that the detailed affidavit in reply has been filed by respondent NO.2 and there is no adjudication on merits by the Central Government and, therefore, no interference is necessary.

I have considered the submissions made by the learned advocates for the parties. The fact remains that before the conciliation officer, in view of the strike notice issued by the petitioner workman, conciliation has been held and failure report was submitted; termination is under challenge. In case, if ultimately reference is made for adjudication, then, it is for the labour court or the tribunal concerned to consider the criminal record of the petitioner for considering as to whether he is fit for employment or not. These are not the powers of the Central Government under section 12(5) of the Act for not referring the matter on the ground that the petitioner is having criminal record. These are the merits of the matter as to whether the workman is entitled for reinstatement or not. The tribunal or the labour court concerned may come to such conclusion that the petitioner is not entitled for the relief but for that, the Central Government is not having jurisdiction to examine the merits of the matter as to whether the petitioner is entitled for reinstatement or not. This being beyond the purview of the Central Government under section 12(5) of the Act, I am of the view that the Central Government has acted beyond its jurisdiction in examining that part of the matter as it amounts to adjudication on merits and, therefore, on that ground alone, this petition is required to be allowed and the impugned order made by the Central Government is required to be quashed and set aside.

Accordingly, for the reasons recorded hereinabove, this petition is allowed. The order passed by the first respondent dated 4th December, 2001 is hereby quashed and set aside. It is hereby directed to the respondent NO.1 to reconsider the matter and pass

appropriate order in accordance with law within three months from the date of receipt of copy of this order. Rule is accordingly made absolute with no order as to costs.

Dt. 31.3.2003. (H.K. Rathod,J.)

Vyas