

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

WPA/240/2025

P. Nagesh Kumar

Vs.

The Hon'ble Lt. Governor & Others

Mr. Adarsh Ilango ... for the petitioner

Mr. Rakesh Kumar
Mr. Dibesh Dwivedi ... for the respondents

July 07, 2025
[AKB]
Item No.7

The petitioner has filed the present writ application challenging the order passed by Assistant Secretary (Labour) dated 16th January 2025 holding that the petitioner was negligent in adhering to the orders and direction of the Management and instead he approached the forum for his appointment in the office of his choice, which is not acceptable. It is also informed to the petitioner that the Industrial Dispute raised by the petitioner before the Conciliation Officer about the retrenchment of the service of the petitioner by the Executive Engineer, SVPSD, APWD, Sri Vijaya Puram is rejected.

The petitioner was engaged as Daily Rated Mazdoor in the APWD, Andaman and Nicobar Administration in the year 2016. By an order no. 145 dated 18th March 2021 the petitioner along with other nine similar situated persons were directed to report their duty at the office of Superintending Engineer, Electricity Department. The

department of Electricity was not accepting the Daily Rated Mazdoors engaged by the APWD. The APWD forcibly relieved the petitioner on 4th December 2021 but three Daily Rated Mazdoors were allowed to continue their work at APWD.

The petitioner has made several representations to the authorities but the request of the petitioner was not considered. The petitioner has submitted his representation to the Assistant Labour Commissioner but the representation submitted by the petitioner was not disposed of and accordingly, the petitioner has filed a Writ Petition before this Court and as per direction passed by this Court the Conciliation proceeding was initiated and a failure report was submitted to the Administration on 4th December 2024.

The Assistant Secretary (Labour) refused to refer the matter to the Labour Court on the ground that the petitioner was negligent in adhering to the orders and direction of the Management and instead he approached the forum for his appointment in the office of his choice, which is not acceptable. It is also informed to the petitioner that the Industrial Dispute raised by the petitioner before the Conciliation Officer about the retrenchment of the service of the petitioner by the Executive Engineer, SVPSD, APWD, Sri Vijaya Puram is rejected.

The Assistant Secretary (Labour) could not refuse to refer the matter to the Labour Court. The authority could not scrutinize the issue judiciously. In the present case

decision was passed by reasons, which was given after entering into the merits of the matter. Reference was made under Section 10 of the Industrial Disputes Act and Section 11(A) empowers the Labour Court or the Tribunal to adjudicate the issue relating to discharge or dismissal of an employee. Whether opportunity of hearing was given to the employee or whether the punishment was proportionate or not, could not be decided by the Assistant Secretary (Labour).

The Hon'ble Supreme Court in the case of **State Of Bombay Vs. K.P.Krishnan** reported in **1991 (1) SCR 2012** held that the discretion was vested in the appropriate Government to decide to make or not make reference. Moreover, the question as to whether a case for reference was made out or not could be answered in the light of all the relevant circumstances, which would have a bearing on merits of the case. It was further held that so far as the scope of judicial review of an order passed under Section 12(5) of the Industrial Disputes Act, 1947 was concerned, a writ of mandamus would lie if no reasons were accorded or if it could be shown that the refusal to refer a dispute was not *bona fide* or was on wholly irrelevant facts and circumstances. Thus, it will not be correct to hold that an order of reference should not be a speaking one or should not touch upon the merits of the case.

In the unreported judgment passed by the Coordinate bench of this Court in the case of G.Tulsi Das Vs. The

Principal Chief Conservator of Forest and Others in WPA No.

178 of 2022 dated 4th March 2024 held that:

“11. From a harmonious reading of the ratios laid down in K.P. Krishnan (supra), by a Constitutional Bench of the Hon’ble Supreme Court, and in Ram Avtar (supra), a decision passed after introduction of section 11A to the Industrial Disputes Act, the following propositions emerge. -

(a) Although, Ram Avtar (supra) deals with the expansive scope of section 11A of the Industrial Disputes Act, the power of the appropriate Government to make a reference in terms of section 10 read with section 12(5) of the Industrial Disputes Act has neither been struck down nor been rendered nugatory.

(b) The appropriate Government is vested with the power to make a reference or not and such question would be answered in the light of relevant circumstances, which could have bearing on the merits of the case.

(c) However, the appropriate Government ought not indulge in making an adjudication on merits as the same would render a possible exercise in terms of section 11A of the Act redundant.

(d) For the judicial review of an order based under section 12(5) of the Act, a writ of mandamus would lie, if no reasons are recorded or the refusal could be shown to be attended with malafide or is based on consideration of wholly irrelevant facts and circumstances.”

This Court finds that the reasons assigned in the impugned order dated 16.01.2025 is not in accordance with law. The Assistant Secretary instead of deciding the issue ought to have refers the matter to Labour Court.

In view of the above, the impugned order dated 16th January 2025 passed by the Assistant Secretary (Labour) is set aside and quashed. The appropriate authority is directed to make reference to the Labour Court with respect to the dispute raised by the petitioner in accordance with Section

12(5) of the Industrial Dispute Act, 1947 with in a period of six weeks from the date of receipt of this order.

WPA/240/2025 is disposed of.

(Krishna Rao, J.)