on behalf of the assessee that he had in any way been adversely affected by the delay in the issue of the registration certificate. Nor did the assessee pray for any relief being given on that ground. He could be assessed under sub-sections (1), (2) and (3) of section 11 of the Act, because he filed the return at a time when he was a 'registered dealer'. We, therefore, answer the question referred in the affirmative. The Department will have its costs of these proceedings from the assessee.

B. S. G.

MISCELLANEOUS CIVIL

Before M. R. Sharma, J.

LAKSHMI NARAIN KAPOOR,—*Petitioner.*

versus

THE PUNJAB STATE, ETC.,—*Respondents.*

C.W. No. 4005 of 1972.

August 23, 1973.

Industrial Disputes Act (XIV of 1947)—Sections 10 and 12(5)—Constitution of India (1950)—Article 226—Worker approaching the Government for referring a dispute to the Industrial Tribunal under section 10—Government—Whether can give a decision on the merits of the dispute—Action of the Government refusing to refer the dispute to the Tribunal—Whether can be corrected by the High Court in proceedings under Article 226, Constitution of India—Writ of Mandamus—When can be issued.

Held, that the Industrial Disputes Act, 1947 has been brought on the statute book for setting disputes between the management and the workers in the interest of industrial peace. At the time when the Government is called upon to consider whether a reference should be made or not, it has to keep before its mind's eye two considerations only, namely, (1) whether an industrial dispute exists or not; and (2) whether it would be expedient to make a reference or not. The Government cannot usurp the jurisdiction of an Industrial Tribunal or a Court and give a decision on merits.

(Para 4)

Held, that if an appropriate Government declines to make a reference of a dispute to the Industrial Tribunal on the ground that it is not expedient to make such reference in the circumstances of

a case, the action of the Government cannot be corrected in proceedings under Article 226 of the Constitution of India; But a writ of mandamus can issue against the Government if it declines to make the reference without recording the reasons for such refusal or the order is meagre and cryptic and it is not communicated to the parties concerned.

(Para 2)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued quashing the Order No. ID/3/275-A-72/46481 dated 24th August, 1972 and No. ID/3/275-A-72/61198, dated 26th November, 1972 refusing to refer the Industrial dispute between the Petitioner and Respondent No. 4 to Industrial Tribunal or Labour Court.

C. L. Lakhanpal, Advocate, *for the petitioner.*

L. K. Sood, Advocate, for Advocate-General, *for respondents 1 to 3.*

N. K. Sodhi, Advocate, *for respondents 4 and 6.*

JUDGMENT

Sharma, J.—The petitioner was employed as a clerk by M/s. Bharat Woollen Mills, Ltd., Amritsar (hereinafter referred to as the Mills). *Vide* letter dated 9th May, 1972, written by the Mills, the petitioner was informed that his services having become surplus were being terminated with immediate effect and a sum of Rs. 2,217.89 due to him was being remitted to him by money order. The petitioner approached the State Government for making a reference under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the ground that his termination of services was wrongful and actuated by *mala fide* considerations. The Labour Commissioner, Punjab,—*vide* his letter dated 24th August, 1972, informed him that it had not been deemed proper "to refer the demand contained therein for arbitration as the same could not be corroborated." Thereafter, the petitioner made a representation to the Secretary to Government, Punjab, Labour Department, Chandigarh, on 6th September, 1972. He was informed on 26th November, 1972 that his representation was thoroughly considered and rejected. He has filed this petition challenging the action of the Government in refusing to make a reference under section 10 of the Act.

(2) In *The Workmen of the Oswal Weaving Factory, Amritsar* v. *The State of Punjab*, (1), a Division Bench of this Court after making

(1) 1965 Curr. L. J. 541.

an exhaustive discussion of the case law on the subject, held that if an appropriate Government declines to make a reference on the ground that it is not expedient to make a reference in the circumstances of a case, the action of the Government could not be corrected in proceedings under Article 226 of the Constitution. It was also held that a writ of *mandamus* could issue against the Government if it declined to make a reference without recording the reasons for such refusal and without communicating the same to the parties concerned.

(3) The letter dated 24th August, 1972 (Annexure 'D') sent by the Labour Commissioner, Punjab, states that it was not deemed proper to refer the demand for arbitration as the same could not be substantiated.

(4) The Act has been brought on the statute book for settling disputes between the management and the workers in the interest of industrial peace. At the time when the Government is called upon to consider whether a reference should be made or not, it has to keep before its mind's eye two considerations only, namely, (1) whether an industrial dispute exists or not; and (2) whether it would be expedient to make a reference or not. The Government cannot usurp the jurisdiction of an Industrial Tribunal or a Court and give a decision on merits.

(5) In *Workmen of the South India Saiva Siddhanta Works Publishing Society, Tirunolvoli Ltd., Madras* v. *Government of Madras* (2), it was held that though the Government was entitled to come to a conclusion that it was not expedient to make a reference, yet it could not include its own judgment on the propriety or otherwise of the cause of the dispute.

(6) In *Government of Madras* v. *Workmen of South India, Saiva Siddhanta Works Publishing Society, by Madras Press Labour Union* (3), it was reiterated that the Government could not go to the extent of adjudicating upon the merits of the case. Once the Government comes to the conclusion that there was a *prima facie* case, it would be duty-bound to refer the same for adjudication by the Tribunal or the Court.

(2) A.I.R. 1963 Mad. 142.
(3) A.I.R. 1964 Mad. 468.

(7) In *B. Siddoji Rao* v. *The State of Mysore and others* (4), the Court was concerned with the conduct of the Government who refused to make a reference in a dispute arising out of the dismissal of an employee on the ground that the accusation levelled against the worker, in the opinion of the Government, was substantiated or not. The Court observed :—

> "...it was not possible for Government to refuse that reference on the basis of its own opinion as to the truth of that accusation, and especially after the Criminal Court in which the petitioner was prosecuted had ended in his exoneration".....

(8) In the instant case also the ground for refusal to make the reference appears to be that the demand made by the worker could not be corroborated. This shows that the Government itself sat in judgment over the case which was to be determined by a statutory tribunal. Even otherwise the order conveyed to the petitioner is meagre and cryptic. When the statute lays a duty upon the State Government to give reasons for taking a particular action, then such reasons should be mentioned in a reasonably detailed manner. It is not disputed that the orders passed by the Government under section 10 read with section 12(5) of the Act are open to challenge under Article 226 of the Constitution. If such an order is not a speaking order, then this Court cannot proceed to examine whether the reason given are sufficient for upholding the decision of the Government or not.

Though in exercise of jurisdiction under Article 226 of the Constitution, it is not open to me to compel the Government to make a reference, yet if the order of the Government rejecting the reference suffers from the defects of the type mentioned above, it is open to me to quash the order and to remit the case back to the Government for afresh decision in accordance with law. I, therefore, allow this petition, quash the order dated 24th August, 1972 by which the petitioner was informed about the inability of the Government to make a reference and direct the State Government to reconsider the matter in the light of the observations made above. The petitioner will have his costs which are assessed at Rs. 200.

N.K.S.

(4) A.I.R. 1970 Mysore 162.