# Engineering Staff Union and Others Vs State of Bombay and Others

**Court:** Bombay High Court

**Date of Decision:** Sept. 5, 1958

**Acts Referred:** Industrial Disputes Act, 1947 â€" Section 12, 12(4), 12(5), 5

**Citation:** (1959) 1 LLJ 479

**Hon'ble Judges:** M.C. Chagla, C.J; S.T. Desai, J

**Bench:** Division Bench

## Judgement

K.T. Desai, J.

* * *

1. The principal contentions urged by the petitioners are that the reasons given by Government for not referring some of the demands made by the

workmen are not reasons warranted by the provisions of the Act, that in giving some of the reasons the Government has usurped the functions of

an industrial tribunal and has in fact adjudicated upon some of the demands and that the Government has not, in respect of some of the demands,

applied its mind to the matter. I will proceed to deal with the various items, disputes in connexion wherewith have not been referred by the

Government and the grounds given in respect thereof.

2. Pay scales. - The demand of the union in connexion with pay scales is set out in Ex. A to the petition. The union demanded that the existing pay

of the employees should be revised and adjusted according to the scales set out. The union further demanded that scales of pay should be made

effective retrospectively from the date of joining of each employee. The union demanded that while giving effect to the new scales of pay

adjustment should be made on a point-to-point basis"" taking into account the service and/or experience of the employees prior to their joining the

company and/or their age also and that the adjustment should be done in such a manner that no junior employee should receive basic pay higher

than that of any senior employee of the same category. It further demanded that in the case of an employee whose present pay was less than the

minimum of the scale applicable to him, his pay should be first brought to the minimum of the scale and then he should be adjusted in the scale, the

adjustment being effective from 1 April, 1955. The reason given by Government for not referring the demand in connexion with pay scales is as

follows : ""The pay scales in the company compare favourably with those obtaining in other comparable concerns in Bombay."" The petitioners

contend that it is not permissible to the Government to refuse a reference on the ground of the alleged adequacy of the existing pay scales. They

further contend that there were no pay scales in the company applicable to a number of categories of workmen such as store-keepers, assistant

store-keepers, fitters and carpenters and that the reason given by Government was non-existent as regards such workmen and could not possibly

arise out of consideration of the report of the conciliation officer. The petitioners further contend that in fact the pay scales offered by the company

do not compare favourably with those obtaining in other comparable concerns in Bombay and that the Government had committed an error which

was apparent on the face of the record. It is further urged that the union had demanded adjustment of pay of various categories of workmen in

their respective demanded scales of pay and that the company had not offered any adjustment whatsoever even in respect of those categories of

workmen in respect of whom they had offered some scales of pay. Reliance has been placed by the learned counsel for the petitioners on two

decisions of this Court. The first decision relied upon is the one given in Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and

Others, . It is a decision of a Division Bench of this Court, consisting of the Chief Justice and Mr. Justice S. T. Desai. The other judgment relied

upon is an unreported judgment of Mr. Justice S. T. Desai, in Engineering Mazdoor Sabha v. State of Bombay [(1955) O.C.J. Miscellaneous

Application No. 215 of 1955, decided by S. T. Desai, J., on 28 September, 1955 (unreported)]. In the case of Firestone T. & R. Co. v. K. P.

Krishnan, the Government had refused to refer a dispute under S. 12(5) of the Industrial Disputes Act, on the ground that the workmen had

resorted to go-slow tactics. In that case the learned Chief Justice, who delivered the judgment of the appeal Court, observed that under S. 12(5)

of the Act an obligation had been imposed on the Government in connexion with making of a reference to an industrial tribunal. Section 12(5) of

the Industrial Disputes Act runs as follows : ""12. (5) If, on a consideration of the report referred to in Sub-section (4), the appropriate Government

is satisfied that there is a case for reference to a board, labour court, tribunal or National Tribunal, it may make such reference. Where the

appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor."" In dealing

with this section, the learned Chief Justice observes as follows (p. 1145) : "". . . The Government undoubtedly has been given the power to make a

reference, but that power has been coupled with a duty and the duty is that if on a pesual of the report Government is satisfied that there is case for

reference, the duty imposed upon it clearly arises and the Government cannot refuse to discharge that duty. In that sense, therefore, "may" has the

implication of an obligation, an obligation to discharge a duty which follows upon the satisfaction arrived at on a perusal of the report . . . The next

part of Sub-section (5) makes it obligatory upon Government when it does not make a reference to record and communicate to the parties

concerned its reasons therefor. It is perfectly true that the reasons given by Government are not justiciable in the sense that the Court will not

consider the weight or value or the quality or even the adequacy of the reasons given by Government. But it is equally clear that the reasons which

the Government has to give under this sub-section are reasons connected with the perusal of the report and with Government not being satisfied

that there is a case for reference. It is because Government is not satisfied that there is a case for reference that the duty to refer does not arise,

and what the legislature required was that Government must give reasons why it was not satisfied that there was a case for a reference. In our

opinion, therefore, the reasons must be connected with the failure on the part of Government to be satisfied that there was no case for reference. It

is equally clear that if the reasons had no connexion, no bearing and no relevance to this question, then they are not reasons at all contemplated by

Sub-section (5), and if there are not reasons contemplated by Sub-section (5), then it would be open to the Court to ask Government to give

proper reasons which the law requires under Sub-section (5)."" Proceeding further, the learned Chief Justice observes as follows (p. 1145) :- "". . .

therefore, in our opinion, the only question we have to consider in this appeal - and it is a very short question - is whether the reason given by

Government for not making the reference is a reason germane to their not being satisfied that there was a case for reference . . . A reason which is

not germane to the industrial dispute or is not connected with the industrial dispute would obviously not be the reason contemplated by S. 12(5).

The learned Chief Justice at p. 1146 observes as follows :- "". . . If the Government took the view that there was no case whatever on merits, that

the demands of the workers were frivolous or vexatious, that merely the time of the industrial court would be wasted by making the reference, that

the decision was a foregone one, undoubtedly all these considerations would lead to the Government being satisfied that there was no case for a

reference."" The appeal Court in the case confirmed the decision of Mr. Justice Tendolkar who dealt with the matter in the first instance. In the

course of his judgment, which appears at pp. 1139 to 1143 of the same report, Mr. Justice Tondolkar observes Krishnan (K.P.) and Others Vs.

State of Bombay and Another, as under : ""Now, in the first instance it is quite plain that the authority that is to be satisfied under S. 5 is the

Government, and no doubt where the Government gives a reason the adequacy or validity of that reason shall not be inquired into by any Court of

law, provided the reason is germane to the question of making or not making a reference . . . The question, therefore, that I have to determine is

whether the reason that has been assigned by the Government in this case is germane to the consideration of the question of making or not making

a reference or wholly extraneous to it."" The lower Court as well as the appeal Court held that the reason given by the Government in that case for

not making a reference, viz., the workers'' resorting to go-slow tactics, was not a reason germane to the matter and an order was made directing

the issue of a writ of mandamus against the State of Bombay to reconsider the question of making or refusing to make a reference under S. 12(5)

ignoring the fact that there was a slow-down and taking into account only such reasons as were germane to the question of determining whether a

reference should or should not be made. This decision is an authority for the proposition that the reason given by Government for not making a

reference must be germane to the industrial dispute. In this case observations have teen made to the effect that if the reason is germane to the

matter, then it is not open to the Court to enquire into the weight or value or the quality or even the adequacy of the reason given by the

Government. It is urged by the learned counsel for the petitioners that the remarks of the learned Chief Justice when he says that the reasons given

by the Government are not justiciable in the sense that the Court will not consider the weight or value or the quality or even the adequacy of the

reasons given by Government are remarks which do not constitute a binding pronouncement on the subject. He urges that the remarks made

merely show the trend of the mind of the learned Chief Justice. He urges that what the Court in that case had to consider was whether the reason

given by the Government for not making a reference, viz., go-slow tactics adopted by the workmen, was a valid reason under the Act. It was

sufficient for the purpose of that case to hold that the reason given was clearly not germane to the question of referring or not referring the dispute.

He urges that in that case the wider question as to whether the Court could consider the weight, value or the quality or adequacy of the reasons

given by Government did not directly arise for decision. The learned counsel for the petitioners has placed strong reliance upon the observations of

the House of Lords in the case of Quinn v. Leathem 1901 A.C. 495 the Earl of Halsbury in that case observes as fol

lows :- "". . . that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the

expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the

case in which such expressions are to be found . . . case is only an authority for what it actually decides. I entirely deny that it can be quoted for a

proposition that may seem to follow logically from it."" I am in respectful agreement with these observations. The appeal Court in the case of

Firestone T. & R. Co. v. K. P. Krishnan was dealing with a matter which arose under S. 12(5) of the Act. The Court had to consider what

meaning should be given to the words ""may refer"" appearing in that section. The Court had also to consider the question in connexion with the

reasons that may be given by the Government for not making a reference and the power of the Court to interfere in respect of a matter where

reasons are given by Government. It was not, strictly speaking, necessary for the purpose of that case to decide the question about the weight,

value, quality or adequacy of the reason given in view of the fact that the Court held that the reason given was not germane to the question of

making or not making a reference. However, the remarks of the learned Chief Justice, when he observes that the Court would not consider the

weight or value or the quality or even the adequacy of the reasons given by Government where the reasons given are germane to the matter,

represent, if I may say so with respect, a correct enunciation of the law on the subject. The Court is not constituted an appellate authority in

connexion with the decision of the Government and is not entitled to consider the question of the weight, value, quality or adequacy of the reason

given by Government which is germane to the matter. The unreported decision of Mr. Justice S. T. Desai, given in the case of Engineering

Mazdoor Sabha v. State of Bombay, an which a strong reliance has been placed by the learned counsel for the petitioners, does not in any way

militate against what is stated above. The dispute in that case related to dearness allowance. After the conciliation officer made his report under S.

12(4), Government entered into an agreement with the persons in management of the company whereunder those in management of the company

agreed to revise the dearness allowance payable to the monthly-rated employees whose monthly basic salaries did not exceed Rs. 330 with effect

from a particular date. This agreement was arrived at without the knowledge and behind the back of the Engineering Mazdoor Sabha, the

petitioners in that case. The Government refused to make a reference of the dispute to an industrial tribunal. The only reason given by Government

was as follows :- ""The management have agreed to revise the dearness allowance payable to the monthly-rated employees whose monthly basic

salaries do not exceed Rs. 330 at the following rate with effect from 1 July 1953."" Dealing with this case the learned Judge observes as follows :- "".

. . the whole controversy that has arisen before me is whether the Government has given a reason which was relevant or germane to the matter

which came up for its consideration on the report made by the conciliation officer,"" The learned Judge after discussing the matter further observes

as follows :- ""The conclusion which I have reached is that the reason given by the respondent 1 in the order challenged before me is not germane to

the matter and was one which in a case under S. 12(5) it was not permissible to the respondent 1 to take into consideration in declining to make

the reference. Therefore, the effect of this is that there is no valid reason recorded by the Government and communicated to the parties concerned

for the refusal to make a reference, in the matter of the report made by the conciliation officer to the Government under S. 12 of the Act."" This

decision also lays down that the question which the Court has to consider is whether the reason given is germane to the matter. There are other

observations made in this judgment which are relied upon by the learned counsel for the petitioners. They are as follows : ""It was repeatedly

stressed that the Government had gone outside the bounds of its sphere of action in a matter arising under S. 12(5) and taken upon itself the

functions of the tribunal which was to decide whether dearness allowance should or should not be given or on what basis the same should be given.

There is considerable force in this argument . . . Moreover, it is not competent to the Government to adjudicate upon the dispute between the

parties. That is the province of the tribunal. The Government in a case falling under S. 12(5) has to consider the report of the conciliation officer

and decide whether there is a case for making a reference. The section itself lays down the scope and ambit of the powers of the Government in

any such case."" I am in respectful agreement with the observations made as above. It is the duty of the Government to examine the matter for the

purpose of considering whether it should or should not make a reference. It is not the function of the Government to adjudicate upon the dispute. It

may be that for the purpose of considering whether the Government should refer or should not refer a dispute to the industrial tribunal the

Government may have to evaluate the demands, Government may have to consider whether the demands are frivolous or vexations and the

Government may have to consider whether the demands are such that no reasonable tribunal could be expected to grant them. In doing so the

Government does not take upon itself the function of the tribunal or adjudicate upon the dispute. The adjudication of a dispute by a tribunal would

be an adjudication binding on the parties. The decision of Government not to refer a dispute to an industrial tribunal does not result in an

adjudication of the dispute. It only leaves the dispute unresolved and leaves the parties to their other remedies. It is next urged that in not making a

reference under S. 12(5) Government cannot travel beyond the report made by the conciliation officer and that the reasons given by Government

for not making a reference must be such as can be given only on a perusal and consideration of the report. It is urged that if any reason is given the

basis for which cannot be found in the report, then the reason would be one which it is not open to the Government to give under S. 12(5) of the

Act and the decision of Government would be vitiated by reason thereof. Reliance has been placed by the learned counsel for the petitioners on

some of the observations of Mr. Justice S. T. Desai in the unreported judgment referred to above. In the course of his judgment in that case the

learned Judge has observed as follows : ""I have already observed that the reasons on which the decision must be based must have for their basis

the report made by the conciliation officer. The reason cannot be anything which may have subsequently transpired between the Government and

the employers."" He further observes as follows : ""The Government in a case falling under S. 12(5) has to consider the report of the conciliation

officer and decide whether there is a case for making a reference."" The Court in that case was concerned with considering whether the happening

of an event subsequent to the making of the report, behind the back of the petitioners, could be relied upon for the purpose of not making a

reference and the Court held that it could not be done. This is not the same thing as saying that the report, and nothing but the report, can be

considered and that the reasons which can be given are only those found by a person only on a perusal and consideration of the report. The report

has to be considered. It is nowhere provided that it should constitute the only material from which Government must derive its reasons. I have on

several occasions found that the report merely sets out the disputes between the parties and says that the conciliation officer in spite of his best

efforts has not been able to resolve the disputes. If Government had only to look to the report for its reasons and nothing else, a situation may arise

where it would be impossible for Government to apply its mind to the matter and come to a conclusion one way or the other whether a reference

should or should not be made. The mere statement of the disputes between the parties and the mere statement that the conciliation officer has not

been able to resolve the disputes would not furnish any reason whatsoever for either making a reference or for not making a reference. No doubt,

it is obligatory on the Government to consider the report of the conciliation officer in considering whether to make a reference or not to make a

reference. But the reasons given by Government for not making a reference need not be drawn only from what is stated in the report. There is an

unreported judgment of a Division Bench of this Court, consisting of Mr. Justice Bavdekar and Mr. Justice Shah, in Baroda City Municipal

Servants" Union v. State of Bombay [(1955) Special Civil Application No. 715 of 1955, decided by Bavdekar and Shah, JJ., on 13 July, 1955

(unreported)] dealing with a case arising under S. 12(5) of the Act. In that case, Government refused to refer the dispute that had arisen for

adjudication by an industrial tribunal after considering the report of the conciliation officer. The reasons given by Government for not doing so were

as follows :- ""(1) the decision of the municipality to reduce the retiring age from 60 to 55 is in keeping with the current policy of Government for

fixing the retirement age; (2) the present case is for the enforcement of contractual conditions and in such cases the matter should be

settled through a civil court rather than through adjudication proceedings; (3) the dispute was raised after more than two years and it is not proper

to refer stale cases for adjudication; and (3) the dispute is between a public body in a merged State area which has acted in keeping with its former

practice of passing a resolution and the want of a technical sanction was due to ignorance of the rules of this State during the transition period."" In

that case it was urged on behalf of the petitioner that if there was a prima facie case made out by the petitioner, then the Government was under an

obligation to refer the dispute for adjudication by an industrial tribunal. In dealing with this argument, Mr. Justice Bavdekar, who delivered the

judgment of the Court, observes as follows :- ""The meaning of the words "there is a case" therefore is that there is a case for reference, not only

because a prima facie case has been made out, but also because of several other reasons which the Government is entitled to take into

consideration, as they appear to have taken into consideration in the present case. Government may, for example, refuse to make a reference in

spite of the fact that the employee has got a good case if the employee comes up - say after ten years. There may be other grounds upon which the

Government may refuse to make a reference in spite of the fact that the employee has got a good case. It is unnecessary to go into the various

reasons for which the Government may refuse to make a reference. But there is no reason whatever for restricting the discretion which the

Government has got only to such cases in which there is no prima facie case either for the employer or the employee as the case may be . . . The

learned Judge further observes as follows :- ""In this case Government have given reasons as they were required by law to do. The considerations

for which they would not make a reference are obviously such as they could take into consideration in deciding whether a reference should be

made or not. It is obvious that none of them is irrelevant to the question which the Government had to decide, viz., whether a reference should be

made or should not be made. In that case whether we think that the reasons which were given were good in the sense that we would have made a

reference if the matter had been left to us is neither here nor there. Government having made up their mind that they would not make a reference

for the reasons which are all relevant for the consideration of the question which was before them, it could not be said that the exercise of

discretion was arbitrary."" This decision also lends support to the conclusion to which I have arrived at. The reasons there given by Government

were germane to the question whether a reference should or should not be made. Some of the reasons given were such that they could not have

been drawn from the report and the report of the conciliation officer could not be regarded as the only material from which the Government had to

find its reasons for not making a reference.

3. Coming to the facts of the present case, as regards pay scales, the reason given by Government for not making a reference is that the pay scales

in the company compared favourably with those obtaining in other comparable concerns in Bombay. That is a reason germane to the question

whether a reference should or should not be made and the Court is not concerned with the adequacy of that reason. The mere fact that the pay

scales of company did not meet all the demands of the union could not be made a ground for challenging the decision of Government in not

referring the dispute in relation to pay scales to the industrial tribunal. The statement made by Government that the pay scales compare favourably

with those obtaining in other comparable concerns does not, in any sense, amount to an adjudication of the dispute between the union on the one

hand and the company on the other. There is in fact no adjudication by the Government in the matter. Government has merely evaluated the

demand of the union which it has every right to do in not making a reference. It is not possible to say that Government has in any way exceeded its

powers or functions in giving the aforesaid reason for not making a reference in connexion with this demand. The next item in respect whereof a

complaint is made is as regards the demand of the workmen under the heading ""Confirmation."" The ground given by Government in not referring

the same is as follows. - ""The offer made by the company during the conciliation proceedings to make employees permanent after six months of

continuous service is reasonable."" It is urged on behalf of the petitioners that there was no such concrete offer whatsoever ""as could be easily

ascertained"" and that the reason given was non-existent. In the affidavit in reply filed by Sri B. B. Brahmbhat, Deputy Secretary to Government,

Labour and Social Welfare Department, dated 25 April 1958, it is stated as follows :- ""Government''s decision for not referring this demand is

based on the conciliation officer''s report and the said reason is germane to the dispute. I further say that the second respondent company''s offer

to make every employee permanent after completion of six months'' continuous service was acceptable to the union in respect of clerical staff, but

not in respect of subordinate staff."" There was, in fact, an offer made by the company. The complaint made is that there was no ""concrete offer

such as could be easily ascertained. The conciliation officer''s report in this connexion is as follows :- ""The management agreed to make every

employee permanent after completion of six months'' continuous service. This was acceptable to the union only in respect of clerical staff. The

union wanted subordinate staff, however, to be made permanent after completion of four months'' continuous service. The management was not

agreeable to this."" In view of what is stated in the conciliation report there is no substance in this objection. At the hearing before me, the learned

counsel for the petitioners contended that the reason given by Government for not making a reference in this connexion amounts to an adjudication

of the matter. In my view, there is no adjudication by the Government of the dispute that had arisen in connexion with this demand. It was further

urged before me that there was no application of the mind by Government in giving this reason. In my view, there is no such non-application of the

mind in giving this reason. The third item complained of relates to ""provident fund."" The reason given by Government for not referring the matter in

connexion with provident find is as follows; ""The demand was not pressed by the union during the conciliation proceedings."""" It is contended on

behalf of the petitioners that this statement is totally divorced from the facts. The petitioners say that during the conciliation proceedings they at no

time did not press the demand. The report of the conciliation officer supports them in what they say. In connexion with the demand for provident

fund, the conciliation officer observes as follows :- ""The union contended that the company was having some kind of provident fund for employees

since 1 April, 1939 and the initial rate of contribution by an employee was 5 per cent of basic pay and the contribution by the company was only

1.25 per cent of an employee''s basic pay. This unequal rate continued up to 1947. From 1947 to 1950, the company''s contribution was raised to

the same level as that of an employee, i.e., 5 per cent of his basic pay for both sides. From 1 April, 1950 to 1 February, 1956 this rate was raised

to 6 1/4 per cent of basic pay for both sides. Since 1 February, 1956 the rate of contribution has been increased to 6 1/4 per cent on total

emoluments, i.e., basic pay including dearness allowance. The union further contended that provident fund has been in existence in Bombay in

various companies at the rate of 8 - 1/3 per cent of basic pay. The union also contended that as the company has no gratuity scheme uptil now, the

rate of contribution should be increased to 10 per cent of the total emoluments from the date of the joining of each employee. The management

contended that a provident fund has been in existence in the company since 1939. For the benefit of those employees who joined prior to 1939 a

supplementary provident fund was instituted consisting of fifteen days'' basic wages for each completed year of service prior to the date when

provident fund came into being. The rates of contribution to provident fund varied progressively from time to time, the present rate being 6 1/4 per

cent of total emoluments, i.e., basic plus dearness allowance with an equal contribution by the company. The company was not prepared to

consider any change in the existing provident fund."" This clearly indicates that the union pressed its demand for provident fund during the course of

the conciliation proceedings and that the company was not prepared to consider any change in the existing provident fund. The statement made by

Government is clearly erroneous, and it cannot be a ground for refusing to refer the question relating to provident fund for adjudication by the

industrial tribunal. It seems, however, that after the conciliation proceedings were over and the conciliation officer had made his report, the general

secretary of the union on 11 April, 1937 made a representation to the Secretary to the Government of Bombay, Labour and Social Welfare

Department, in connexion with the reference of the disputes by Government for adjudication to an industrial tribunal. In the course of that letter,

under the heading ""Provident fund,"" he stated as under : ""If our demand for gratuity is either conceded in toto or referred to adjudication in toto

without any modification, we would not press this demand."" The only time when the union stated that it would not press the demand for provident

fund is by this letter. This offer was a conditional offer, the condition being that the demand for gratuity should be conceded in toto or referred to

adjudication ""in toto"" without any modification. This demand for gratuity was neither conceded in toto nor referred to adjudication in toto without

any modification as stipulated by the union. As a matter of fact, Government has, itself in its letter dated 14 August, 1957, whilst giving reasons for

not referring the demands of the union under the heading ""Additional gratuity"" stated that the demand was not justified. In my view, whatever other

reason might be open to Government for not referring the demand in connexion with provident fund, the reason as given is not warranted by the

facts, and the Government''s decision not to refer the demand in connexion with provident fund cannot be justified for the reason stated by

Government. Really, that reason having no foundation in fact is no reason at all. The Government would be under an obligation to reconsider the

matter and if it decides not to refer the matter, to give a reason for not doing so which is germane to the question. The fourth item complained of is

the item relating to ""Additional gratuity."" The reason given by Government for not referring that item is as follows : ""The demand is not justified.

The demand in connexion with additional gratuity is as follows : ""Employees should be given additional gratuity at the rate of one month''s pay for

the period from the date of his joining till the date when provident fund with 10 per cent rate of contribution by employees and company comes

into effect."" The Government having declined to refer the question relating to provident fund for adjudication, this demand for additional gratuity

was liable to meet with the same fate inasmuch as the demand was for payment at the rate of one month''s pay for the period commencing from the

date of an employee''s joining till the date when provident fund with 10 per cent rate of contribution by the employees and the company was to

come into effect. Under the provident fund scheme which was in operation the contribution was at the rate of 6 1/4 per cent and not at the rate of

10 per cent. It was the demand of the union that it should be at the rate of 10 per cent. The aforesaid demand was not referred. The Government,

consistently with its decision in not referring the question relating to provident fund, could not refer the dispute relating to additional gratuity. The

question of reference of the dispute as regards provident fund is connected with the question of the reference of the dispute relating to additional

gratuity. As the reason given by Government for not referring the demand in connexion with provident fund is not warranted by facts and the

question of referring the dispute in connexion with provident fund is again opened up, the question relating to referring the dispute in connexion with

additional gratuity is liable equally to be opened up and the reasoni

ng given in connexion with additional gratuity cannot be sustained. Government would be under an obligation to consider the question of referring

or not referring the demand in connexion with the additional gratuity afresh. The next item complained of relates to leave under the headings

Privilege leave,"" ""Sick leave"" and ""General."" The ground for not referring the dispute relating to privilege leave given by Government is as follows :

The 21 days'' privilege leave per year granted by the company is adequate."" It is urged on behalf of the petitioners that this really amounts to an

adjudication of the matter and that the Government has usurped the functions of the Industrial tribunal in connexion therewith. In my view, the

reason given by Government is germane to the question whether a reference should or should not be made. It does not amount to an adjudication

between the parties and the action of Government in not referring that dispute is not liable to be challenged. As regards sick leave, the reason given

by Government for not referring the dispute in connexion therewith is as under : ""The union is satisfied with the 30 days'' sick leave per year

granted by the company."" The demand in connexion with sick leave was as follows : ""Each employee should be granted one month''s sick leave

with full pay and dearness allowance for every eleven months'' service, and it should be allowed to be accumulated throughout the entire period of

service. This leave should be available retrospectively from the date of joining of each employee."" In the report of the conciliation officer, in

connexion with the question of sick leave, it has been stated as follows : ""Sick leave : 30 days annually subject to medical certificate when absence

is over two days (3 days under exceptional circumstances) and subject to a maximum of 12 months in all during the whole of employee''s period of

service. The union is satisfied with 30 days sick leave with pay and dearness allowance. As regards accumulation of sick leave, the union

contended that there should not be any ceilings. The union wanted the privilege leave and sick leave to be given effect to from January 1951. The

management was not prepared for the retrospective effect."" The reason given by Government in connexion with sick leave is not factually correct.

The union''s demand about giving retrospective effect to the provisions relating to sick leave was not satisfied. The union''s demand that there

should be no ceilings in connexion therewith was not met. The union was not satisfied with the same. The reason given by the Government does not

apply to these two aspects of the matter. There is no reason given for not referring the dispute in connexion with these two matters. The

Government will have to consider the question about referring the demand in connexion with sick leave to the extent stated above afresh, and if

Government decides not to refer the question, Government would be under an obligation to give reasons therefor. The demand in connexion with

leave under the heading ""General"" has not been referred by the Government on the ground that the demand was not reasonable. The reason given

is germane to the question of referring or not referring that demand. The contention that Government has adjudicated upon that demand is not

tenable. Then comes the dispute relating to "standing orders."" The reason given by Government for not referring the same is as follows : ""The

company is not covered by the Industrial Employment (Standing Orders) Act, 1946, but it has agreed to frame service rules providing, inter alia,

for classification, leave, retirement, discharge, etc."" The reason given by Government is germane to the question of referring or not referring the

aforesaid demand and that reason is not liable to be challenged. It is, however, urged that the company had agreed before the conciliation officer to

frame service rules providing, inter alia, for classification, leave, retirement, discharge, etc., within two months. The conciliation proceedings had

ended on 19 March, 1957, and the said period of two months would in any event expire by 19 May, 1957. It is urged that on the date

Government refused to make a reference in connexion with that dispute, there was already a breach of the agreement by the company to frame the

service rules within the time mentioned by the company. I am informed by Mr. Joshi, the learned counsel for the company, that the service rules

have hitherto not been framed and that they are in the process of being framed. The fact that the company has failed to frame service rules within

the time mentioned by it does not mean that after the lapse of two months the company did not remain under an obligation to frame service rules.

The question about the advisability of the Government relying upon an agreement which had not been carried out within the time mentioned by the

company is not one which can be agitated before the court. The Court cannot consider the question of the adequacy of the reason given. The

reason given is germane to the question of reference, and the action of Government cannot be challenged on the ground of the alleged inadequacy

of the reason given. The Court on a petition for the issue of a writ is not sitting in appeal against the decision of the Government. The objection

urged in this connexion must fail. The last item complained of is the item relating to ""Mr. Ferns."" The reason given by Government for not referring

the dispute in connexion with that item is as follows : ""The demand is not reasonable Sri Ferns had resigned and was offered reemployment later on

but he refused to accept it."" The reason given by Government is germane to the matter and it cannot be said the Government has usurped the

functions of an industrial tribunal or has adjudiciated upon the matter in giving the aforesaid reason. The objection in connexion with this item is not

tenable. In the result, the petitioners are entitled to the issue of a writ of mandamus against respondent 1 requiring them to reconsider the question

of making or refusing to make a reference under S. 12(5) of the Act in connexion with the disputes under the headings ""Provident fund"" and

Additional gratuity"" and ""Sick leave,"" in so far as the dispute relates to retrospective effect to be given to the provisions relating to sick leave and

the imposition of ceilings, taking into consideration only such reasons as are germane to the question of determining whether a reference should or

should not be made in connexion therewith. The rule is made absolute to that extent.

II

Chagla, C.J.

4. This appeal raises some important questions as to the interpretation of S. 12(5) of the Industrial Disputes Act, and we have listened to a very

able argument from Mr. Phadke about the manner in which that section should be construed. It appears that appellant 1 which is a union of

workers who were employed in respondent 2 company made certain demands on 27 March, 1956, and as these demands were not accepted by

respondent 2 company, an application was made to the conciliation officer on 6 April, 1956. After some preliminary discussions between May and

September 1956 conciliation proceeding commenced and ultimately, as unfortunately so often happens in labour disputes, they failed. The

conciliation officer made a report under S. 12 on 2 April, 1957. On 30 July, 1957. Government referred to adjudication certain items in the

disputes. But they refused to refer certain other items and on 14 August, 1957, the Government communicated to the parties the reasons for their

refusal. Now, the items which the Government refused to refer were ten. They dealt with pay scales, confirmation, provident fund, additional

gratuity, leave, overtime payment, uniforms, allowance, standing orders and the case of one Mr. Ferns. On receiving this intimation appellant 1 and

appellant 2, who is an employee of respondent 2 company, presented this petition for a writ of mandamus to compel the Government to refer these

matters for adjudication. Mr. Justice K. T. Desai issued a limited writ of mandamus calling upon the Government to reconsider their decision with

regard to the question of provident fund and sick leave. With regard to the rest of the matters, he held that it was not open to the Court to interfere

with the decision arrived at by the Government. It is against this decision that this appeal is preferred. Now, before we go to the merits of the

matter, it is necessary to look at the section and to consider what is the obligation of Government under that section. The section came up for

consideration in Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others, and in that judgment we pointed out that the

expression ""may"" referred to in S. 12 refers to a duty imposed upon Government and that, although the Government undoubtedly had been given

the power to make a reference, that power had been coupled with a duty and the duty was that if on a perusal of the report Government was

satisfied that there was a case for reference, the duty imposed upon it clearly arose and the Government could not refuse to discharge that duty.

We also pointed out that the next part of Sub-section (5) made it obligatory upon Government, when it did not make a reference, to record and

communicate to the parties concerned its reasons therefor. We were at pains to observe that it was perfectly true that the reasons given by the

Government were not justiciable in the sense that the Court would not consider the weight or value or the quality or even the adequacy of the

reasons given by the Government; but we pointed out that it was equally clear that the reasons which the Government had to give under this sub

section were reasons connected with the perusal of the report and with Government not being satisfied that there was a case for reference. It was

observed that it was because Government was not satisfied that there was a case for reference that the duty to refer did not arise, and what the

legislature required was that Government must give reasons why it was not satisfied that there was a case for reference. It was under these

circumstances that we came to the conclusion that the reasons must be connected with the failure on the part of the Government to be satisfied that

there was no case for reference. We, therefore, decided what our power in this case was by observing that it was equally clear that if the reasons

had no connexion, no bearing and no relevance to this question, then they were not reasons at all contemplated by Sub-section (5), and if they

were not reasons contemplated by Sub-section (5), then it would be open to the Court to ask Government to give proper reasons which the law

required by Sub-section (5). One further observation may be noted : ""A reason which is not germane to the industrial dispute or is not connected

with the industrial dispute would obviously not be the reason contemplated by S. 12(5)."" Now, this matter has been further elaborated in this case

by Mr. Phadke and his first contention is that it is not open to Government to refuse to refer a matter by deciding the matter themselves. According

to him, it is only in a limited class of cases that Government could exercise its powers of not referring a matter for adjudication; and he contends

that to the extent that refusal to refer is connected with the merits of the dispute, it is only when the Government comes to the conclusion that the

demands made by the workers are frivolous or they are such as no reasonable tribunal could possibly entertain, that Government can refuse to

refer the matter for adjudication. Therefore, according to Mr. Phadke, if the reason given by Government suggests that in exercising their power,

they have considered the merits of the matter and have satisfied themselves that on merits the workers had no case, then they are giving a reason

which is not a reason contemplated by Sub-section (5). Mr. Phadke uses a rather impressive expression that a distinction must be drawn between

deciding a dispute and deciding whether a dispute should be referred to arbitration; and according to him the power of Government is merely to

decide whether the dispute should be referred and not to decide the dispute itself. According to him, the legislature has set up competent tribunal to

decide disputes between the workers and the employers and under Sub-section (5) of S. 12, it is not the function of the Government to arrogate to

themselves the power of industrial tribunals. Now, in considering this matter, we must not overlook the important object of this legislation and that

object is to maintain peace in industry and to bring about good and friendly relations between employers and employees. Section 12 comes into

operation only after there is a failure in the conciliation proceedings, and if Mr. Phadke''s contention were to be accepted, the result would be this

that however intractable the attitude taken up by the workers may be in the conciliation proceedings, when these proceedings fail by reason of that

intractability, the Government was bound to refer the dispute for adjudication and it did not have the power to consider whether the offer made by

the employer in the conciliation proceedings was a fair and reasonable offer or whether the demands made by the employees were unreasonable

demands. To take that view of the matter would be to make the provisions of S. 12 entirely nugatory. It is true, as again pointed but by Mr.

Phadke, that under the Industrial Disputes Act, the Government may itself be an employer and Mr. Phadke says that to assume that the

Government has the power to go into the merits of a dispute would lead to serious prejudice being caused to the workers when the dispute in

between the workers on the one hand and the Government as the employer on the other hand. Now, the fallacy underlying this argument is that the

appropriate Government"" referred to in S. 12(5) is not the Government which is acting as an employer in a particular case. That Government is

the executive power of the State and when the legislature entrusts certain power to Government it does so, in the hope and expectation that that

power would be exercised in the interest of the people at large. When Government is functioning under S. 12(5), it is not functioning in the interest

of employers or of employees. It is functioning in the interest of industrial peace and in order to bring about a fair and equitable settlement in the

disputes between the parties. Therefore, we refuse to assume that in any dispute - even in a dispute to which Government as employer is a Party -

Government would not act with that sense of duty and responsibility which the legislature required of it. It would be improper and in our opinion

contrary to the plain language of the section to cut down the power of Government in the manner suggested by Mr. Phadke. It is open to

Government, and indeed it may be the duty of Government, to consider in each case whether conciliation has failed and whether the demands of

the workers are such as required adjudication. Not only when the demands are frivolous such as reasonable people would not put forward, but

even if they are not justified, even if they are not appropriate in the context of the times or in the context of financial conditions, it would be open to

Government not to refer the disputes to adjudication. To suggest that in any decision of Government the element of decision should be absent is to

make S. 12(5) entirely nugatory. Even in the case given by Mr. Phadke, if Government were to come to the conclusion that certain demands were

wholly unreasonable or frivolous, even in that conclusion there would be inevitably an element of decision. In this connexion, question arises

whether the only material which the Government is entitled to consider under S. 12(5) is the report made by the conciliation officer. The language

of the sub-section is : ""If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case

for reference . . ."" What is made obligatory is the consideration of the report of the conciliation officer. But the section does not provide that the

satisfaction ultimately required by the Government is a satisfaction that can only be based upon the report of the conciliation Officer. It would,

therefore, be erroneous to suggest that it would not be open to Government to rely on other materials, other facts, other statistics, other than those

which appear in the report

of the conciliation officer. All that is relevant and germane to the statutory satisfaction can be availed of by the Government in coming to its

conclusion. The satisfaction that the Government has got to arrive at is not a judicial or quasi-judicial act. It does not call for any judicial process,

although undoubtedly it would be more satisfactory if Government were to discuss various matters in the presence of both the parties before it

came to a particular conclusion. But the law does not cast any obligation upon the Government to do so and the very fact that the legislature has

left the matter to the subjective satisfaction of Government clearly shows that any idea or suggestion of judicial process is excluded. Then the next

question that we have to consider is what is the nature of the reasons which the Government has to record and communicate to the parties under

Sub-section (5) when it does not make a reference. Now, in Firestone T. & B. Co. v. K. P. Krishnan, we laid down that the reasons

contemplated under this sub-section were reasons which must be germane to the issue before the Government. It must be relevant to the industrial

dispute and to the demands made by the workers, to the answer given by the employer and all matters with which, in substance, the conciliation

officer was concerned. Therefore, we can straightaway exclude one possible reason from the category of the statutory reasons referred to S.

12(5), and that reason is the reason which we defined and excluded in Firestone T. & R. Co. v. K. P. Krishnan. Therefore, when reasons are

given and the Court is considering those reasons, if the reasons disclose any extraneous matter taken into consideration by the Government, or if

they disclose a failure on the part of the Government to take into consideration any relevant factor required by law, undoubtedly the Court would

say that these are not the reasons contemplated by the statute. Now, it is obligatory upon the Government to consider the report of the conciliation

officer. If Government were to state in its reasons that it has not taken that report into consideration, obviously the reason would be bad; equally so

as laid down in Firestone T. & R. Co. v. K. P. Krishnan if the Government takes into consideration the conduct of a worker in deciding whether

he is entitled to a bonus or any other circumstance which is foreign to any determination as to the question of the right of a worker to get bonus.

But Sri Phadke has contended for a much wider obligation being cast upon the government and what he says is that reasons should not be

conclusions of fact or expressions of opinion. They should disclose facts and circumstances on the basis of which the conclusion is arrived at.

Now, this test would be perfectly sound if the reasons which the Government has to give were subject to judicial review or subject to judicial

correction. As we pointed in Firestone T. & R. Co. v. K. P. Krishnan it is not for this Court to consider the value or quality or even the

inadequacy of these reasons and this Court cannot constitute itself a Court of appeal from the decision of the Government. The very limited

jurisdiction that the Court has to exercise is to compel Government to give proper reasons if the reasons given by Government are not reasons

which fall within the ambit of S. 12(5). It is true that it would not be sufficient for Government merely to assert ipse dixit and to say that we are not

satisfied that a reference should be made. That would be no reason at all. The reason must disclose the mental process which has resulted in

Government not being satisfied. The Court would not be concerned with how that mental process worked or how the conclusion was arrived at.

But if the conclusion is germane to the failure on the part of the Government to be satisfied, then the Court cannot ask the Government, as it were,

to give particulars for the reasons given so that the particulars could be considered and investigated by the Court. Mr. Phadke referred to a

legislation, which is not strictly in pari materia but which has some bearing on the question which we are considering, which is well known or

notorious whichever way you call it, the Preventive Detention Act. What Mr. Phadke says is that under that law there is an obligation upon the

detaining authority to furnish grounds and this Court very early in the history of that legislation held that it was incumbent upon the Government to

give particulars in respect of those grounds. Now, the reason for that decision is obvious. The reason was that that legislation gave a statutory right

to the detenu to make a representation to the Government against his detention after he had received the grounds and what we said was that if a

statutory right of making a representation was given, that should be considered to be an effective right and that right could not be effective if the

grounds given were vague and did not contain necessary particulars. Now applying that principle, if S. 12(5) had given a right to the parties to

make a representation to Government against the reasons given by it for not making a reference, then undoubtedly we would have told the

Government to give particulars so that that right could be effectively exercised. No such right is given, nor is there any right of appeal or review

provided against the decision. But says Mr. Phadke there is always the jurisdiction of this Court under the Constitution under Arts. 226 and 227.

But before a party can invoke the jurisdiction of this Court, he must satisfy us that there is any obligation upon the Government to give particulars,

which obligation must be found in the statute itself. If we were to accept Mr. Phadke''s argument, then really we would be submitting the reasons to

be given by the Government under S. 12(5) to judicial scrutiny and, as already pointed out earlier, that was not the intention of the legislature. It

may then be asked : Why is it then that law requires the Government to give reasons ? If they are not subject to judicial scrutiny, if no particulars

need be given, if Government can go into the merits of the matter, why provide for something which is so pale and ineffective in its potentialities ?

The reason for this provision is obvious and, as we shall presently point out, in a well-known House of Lords'' decision it has been stated that the

object of the legislature of providing for Government giving reasons is to ensure that Government will act with a sense of responsibility. A mere

satisfaction without giving reasons is apt to be abused. But when Government has to give reasons, it would apply a much closer mind to the

question because otherwise it may not be easy for the Government to give reasons for the decision it has come to. The further reason for making

this provision is that reasons given by Government can be subjected to public scrutiny and public criticism and no Government - surely not a

democratic Government - would ever take the risk of giving a reason which would be open to public criticism and even condemnation. Now, there

are two decisions both very interesting to which reference has been made by Mr. Phadke. The first is a decision of the House of Lords reported in

Allcroft v. Lord Bishop of London, Lighton v. Lord Bishop of London 1891 A.C. 666. That case arose under the Public Worship Regulation Act,

1874, which provided for a representation to be sent to the bishop of the diocese with a view that he should take specified steps to have the matter

of the representation tried in one of the ways prescribed by the Act and then the Act went on to-say : ""unless the bishop shall be of opinion, after

considering the whole circumstances of the case, that proceedings should not be taken on the representation in which case he shall state in writing

the reason for his opinion."" Now, this case contains many answers to the questions raised by Mr. Phadke. At p. 675 Lord Halsbury gives a

conclusive and convincing answer to the contention of Mr. Phadke that it is only when the demands of the workers are frivolous that Government

can refuse to make a reference. This is what the Lord Chancellor says (p. 675) : ""It is to my mind obvious that if the only discretion intended to be

vested in the bishop was ''a particular discretion,'' that is to say, whether the complaint was frivolous or that there had been really some infraction

of the law, it would have been very easy to find appropriate language to give effect to such a provision but the language of the legislature has, I

think, been careful to show that the bishop''s discretion is not so fettered, and that the inquiry into all the circumstances of the case is one which

may justly include considerations of the good to be done or the mischief involved in proceedings which, unless they obtain the bishop''s sanction,

cannot proceed."" Just as under the Act which the House of Lords was considering the discretion of the Government here is unfettered and to

suggest that Government can only take into consideration only certain facts and not the others is to limit and qualify the discretion which the

legislature has not thought fit to do. At p. 678 in the speech of Lord Bramwell, the learned Law Lord says : ""Then it was said that there was

something he had considered which he ought not to have considered, and something he had not considered which he ought to have, and so he had

not considered the whole circumstances and them only. It seems to me that this is equivalent to saying that his opinion can be reviewed. I am

clearly of opinion it cannot be. If a man is to form an opinion, and his opinion is to govern, he must form it himself on such reasons and grounds as

seem good to him."", and lower down the page, the Law Lord says : ""Then it is said why if his decisions cannot be reviewed is he to state his

reasons ? Lindley, L.J., has given an excellent answer to this. It is that he may be under the necessity of formi

ng a careful opinion, and one that will bear public examination."" And Lord Herschell, on a reference to the same topic, at p. 681 says : ""It was

contended that inasmuch as the legislature requires the bishop to state the reasons for his opinion it was contended that these reasons should be

reviewed to the extent at least of seeing that the bishop had considered all the circumstances of the case. I can draw no such conclusion. I think this

obligation was imposed upon him, in order to secure, as I think it was calculated to do, a careful consideration of the circumstances of the case,

and a conclusion for which in the bishop''s opinion, he was able to disclose adequate reasons. The knowledge that his reasons would be made

public and be the subject of criticism, would manifestly tend to prevent capricious and ill-considered action."" The other judgment is a recent

judgment of Lord Greene reported in Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation (1948) 1 K.B. 223. There the

English Court of Appeal was considering the discretion exercised by the Licensing Authority under the Cinematograph Act and the power given to

the local authorities was to allow a licensed place to be open and used on Sundays subject to such conditions as the authority thinks fit to impose

and when a local authority granted to the plaintiffs leave for Sunday performances subject to the condition that no children under fifteen years of

age should be admitted to Sunday performances with or without an adult, the condition was challenged and the Court held that the local authority

had not acted unreasonably or ultra vires in imposing this restriction. At p. 228 Lord Green says : "". . . When an executive discretion is entrusted

by Parliament to a body such as that local authority in this case, what appears to be an exercise of that discretion can only be challenged in the

courts in a strictly limited class of case. As I have said, it must always be remembered that the Court is not a Court of appeal."" And then the

Master of the Rolls says (p. 228) : "". . . When discretion of this kind is granted the law recognizes'' certain principles upon which that discretion

must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any

court of law."" and then he enunciates these principles. The first is that the exercise of such a discretion must be a real exercise of the discretion. If

the statute requires the authority to have regard to certain matters, then the authority must have regard to those matters. If the nature of the subject-

matter and the general interpretation of the Act makes it clear that certain a matters would not be germane to the matter in question, the authority

must disregard those irrelevant collateral matters. Bad faith and dishonesty, as the Master of the Rolls says, constitute a class by themselves. Then

he considers the argument that was advanced by counsel that the discretion must be exercised with reason and the Master of the Rolls says at p.

230 : "". . . but once it is conceded, as it must be conceded in this case, that the particular subject-matter dealt with by this condition was one which

it was competent for the authority to consider, there, in my opinion, is an end of the case."" He concedes that if a decision on a competent matter is

so unreasonable that no reasonable authority could ever have come to it, then the Court can interfere but to prove a case of this kind - and here the

Master of the Rolls gives a necessary warning ""to prove a case of that kind would require something overwhelming"" and he again repeats that the

decision of the local authority can be upset if it is proved to be unreasonable. The proposition really means that it must be proved to be

unreasonable in the sense that the Court considers it to be a decision which no reasonable body could have come to. He sums up the discussion by

saying that (p. 230) : "". . . The effect of the legislation is not to set up the Court as an arbiter of the correctness of one view over another. It is the

local authority that are set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this Court, in my

opinion, cannot interfere."" These observations apply in their full vigour to the question of the power of the Government that we are considering

under S. 12(5). Mr. Phadke is right that there may be cases where the Court would come to the conclusion that the action of the Government is

unreasonable as disclosed by the reasons given by them. But those cases would be extremely rare and would require, as the Master of the Rolls

said, something overwhelming. One thing more with regard to the law and then we come to the facts. It is clear that when the Court is satisfied that

the reasons given by the Government are not proper or not the reasons contemplated by the law, the Court can compel the Government to give

proper reasons as indeed the Court did in Firestone T. & R. Co. v. K. P. Krishnan and as the learned Judge did with regard to certain matters.

But what is urged by Mr. Phadke is that if Government has given all the reasons and if the Government does not suggest that there are any other

reasons and if the Court comes to the conclusion that those reasons are not proper reasons, the Court must perform a ministerial task of referring

the matter for adjudication. Now, it is clear that it is only if the Government is satisfied that there is a case for reference that a duty arises to make a

reference. The satisfaction of the Government is a condition precedent to the making of the reference. However satisfied the Court may be, the the

Court cannot place itself in the position of the Government and make a reference by reason of its own satisfaction. As we pointed out in Firestone

T. & R. Co. v. K. P. Krishnan, we may have an extreme case where the Government were to say : ""We are satisfied and yet we do not propose

to make a reference."" In such a case the Court would have the power to order the Government to make a reference and it is highly doubtful that

from the reasons given by the Government it will be possible for the Court to infer that those reasons disclose satisfaction on the part of the

Government to make a reference. In such a highly hypothetical eventuality, we do not dispute the power of the Court to compel the Government to

make a reference under S. 12(5). Now, turning to the facts and dealing with each reason given by Government, the first is with regard to pay

scales and the reason given by Government is : ""The pay scales in the company compare favourably with those obtaining in other comparable

concerns in Bombay."" Now, it is pointed out that all that the report of the conciliation officer on this point stated was that the management also

contended that the total emoluments of their employees in each category were higher than in concerns comparable to their concern. The

management was not prepared to change its scales and the rate of dearness allowance. Now, what is urged is that there was no reference in the

report to pay scales in comparable concerns. The only reference was to the total emoluments of the employees and according to Mr. Phadke, the

two matters are entirely distinct. Now, the Advocate-General has satisfied us that pay scales of comparable concerns were actually annexed in the

memorandum submitted by respondent 2 company to the conciliation officer and these papers were before the Government when they gave

reasons for not referring the question of pay scales for adjudication. In view of what we have said earlier, it is difficult to take the view that this is

not a reason which comes within the ambit of S. 12(5). With regard to the second demand, confirmation, the reason given by the Government is :

The offer made by the company during the conciliation proceedings to make employees permanent after six months of continuous service is

reasonable."" In the report of the conciliation officer itself it is stated that the management agreed to make every employee permanent after

completion of six months'' continuous service. Now, what is pointed out by Mr. Phadke is that the offer made by the company was a conditional

offer and the condition was that the confirmation depended on whether or not there existed a permanent vacancy and that the departmental head

should report upon temporary worker''s ability as good. It is clear that the offer of the company whether it was conditional or not, being before the

Government and the Government taking a view that the offer was reasonable, the reason does not suffer from any infirmity. With regard to

provident fund and additional gratuity, the learned Judge has taken the view, with which we agree, that it requires reconsideration by the

Government, and as the cross-objections filed by the Government, as fairly conceded by the Advocate-General in view of our judgment in

Firestone T. & R. Co. v. K. P. Krishnan, are not pressed, it is unnecessary to say anything more about these two matters. Coming to leave, with

regard to privilege leave, the reason given by Government is that 21 days'' privilege leave per year granted by the company is adequate, and the

grievance, which seems to us to be justified, of Mr. Phadke is that the Government has not given any reason with regard to the other aspects of the

question of privilege leave. One is the question of accumulation and the other is with regard to its retrospective effect. Now, the learned Judge

dealing with sick leave, where also Government has not given any reason with regard to this aspect of the matter, has asked Government to

reconsider their decision. In our opinion, the privilege leave stands on the same footing as sick leave and we will vary the judgment of the learned

Judge by including in it the head of privilege leave among the heads which the learned Judge has referred back to Government for giving proper

reasons.

5. With regard to casual leave, that point has not been pressed by Mr. Phadke. With regard to leave in general, all that the Government says is that

the demand is not reasonable. Now, prima facie we would have taken the view that this is hardly a reason contemplated by S. 12(5), but when we

turn to the demand of the employees, the demand is : ""Any leave taken in any year should be treated as part of service of eleven months. Leave

should be available according to the convenience of the employees."" And it seems to us that on the face of it, this demand is untenable and the

Government was right in characterizing it as unreasonable. Even Mr. Phadke could not say anything in support of this rather extraordinary demand

on the part of the workers. The demands with regard to overtime payment, uniforms and allowances are not pressed. With regard to standing

orders, the reason given by the Government is that the company is not covered by the Industrial Employment (Standing Orders) Act, 1946, but it

has agreed to frame service rules providing, inter alia, for classification, leave, retirement, discharge, etc. Now, what Mr. Phadke says is that it is

left to the sweet will of the company to frame standing orders or not. Now, the Government points out that there is no obligation upon the

company to frame standing orders as it does not fall within the Industrial Employment (Standing Orders) Act, 1946. But even so, in the interest of

industrial peace it has accepted the agreement of the company to frame rules dealing with certain service conditions. We are sure that the company

will carry out this agreement. If it does not, it is always open to the employees to raise a dispute with regard to this matter, and we are sure that if

such a dispute is raised and the Government finds that the company has not abided by this agreement, it will take necessary action. Now, finally

coming to the case of Mr. Ferns, the reason given by the Government is : ""Sri Ferns had resigned and was offered reemployment later on but he

refused to accept it."" Now, in the report of the conciliation officer, what is stated with regard to Mr. Ferns is that : ""The union contended that the

management had forced Mr. Ferns to retire and as such he should be given all benefits retrospectively in particular different types of leave, bonus,

gratuity, provident fund and medical expenses. The management contended that Sri Ferns had resigned of his own accord, due to ill-health; the

management was not prepared to consider the demand."" Now, what is urged by Mr. Phadke is that there is nothing in the report of the conciliation

officer to suggest that Mr. Ferns was offered reemployment. Now the fact that Mr. Ferns was offered reemployment is stated in the affidavit made

by Mr. Brahmbhatt on behalf of the Government and the Advocate-General has also pointed out to us that in the notes maintained by the

conciliation officer, which were before the Government, there is a clear statement that during the conciliation proceedings the company had stated

that it had offered reemployment to Mr. Ferns who refused to accept it. Mr. Phadke also argued that the learned trial Judge should not have

referred the matter back to the Government in respect of the heads to which reference has been made but should have issued a writ of mandamus

to Government to refer these matters to adjudication. In view of what we have stated earlier in the judgment about the law, it is clear that this

contention of Mr. Phadke is untenable and must fail. Under the circumstances, we are of the opinion that the judgment of the trial Court should be

maintained except with the slight modification that the Government will reconsider the question of making or refusing to make a reference under S.

12(5) not only with regard to the disputes under the heads provident fund, additional gratuity and sick leave but also with regard to privilege leave.

In substance, the appeal fails. With regard to the costs, the learned Judge made the order that each party should bear its own costs. It is true that in

substance the appellants have failed. But the appeal had raised questions of considerable importance and it is just as well as far as this Court is

concerned that the law should be finally settled by the Court. Under the circumstances we think the fairest order to make should be - no order for

costs of the appeal and no order for costs of the cross-objections. The order made by Mr. Justice K. T. Desai directing the Government to pay

Rs. 75 as costs of an adjournment will be vacated. Liberty to the appellants" attorneys to withdraw the sum of Rs. 1,000 deposited in the Court.