

(2000) 08 MP CK 0076
In the Madhya Pradesh High Court
Case No : L.P.A. No. 8 of 2000

Anand Kumar Dubey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2001) ILR (MP) 188 : (2001) 1 LLJ 371 : (2000) 4 MPHT 431 :
(2000) 3 MPLJ 461

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : M.R. Chandra, for the Appellant; S.P. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

Anand Kumar Dubey was a permanent ladderman in the Central Railway Loco Shed, Katni Junction. He was removed from service from December 12, 1986 for remaining absent from service for about 41 days during 1986. Domestic enquiry was held. However, the claim of the appellant that his absence was due to sickness and death of his mother was not accepted and he was removed from service. He approached his union and the Railway Ministers from time to time and was asked to wait for favourable disposal of his case, but nothing was done. These efforts continued till 1997 and when it was found that despite assurances, Officials and Railway Ministers were not going to do anything, the appellant was compelled to raise industrial dispute u/s 10(1) of the Industrial Disputes Act, 1947, against the railway management before the Regional Labour Commissioner, Central, Jabalpur, for conciliation on July 21, 1998.

Further case of the appellant is that the railway management contested the reconciliation proceedings without objection as to delay and produced official records including service sheets of the appellant with respect to enquiry

conducted against him. The management declined to reinstate the appellant even without back wages and desired the dispute to be adjudicated through Court.

Conciliation proceedings proved failure and report to this effect was sent to the Secretary, Government of India, Ministry of Labour, New Delhi on March 23, 1999, for adjudication of the dispute. However, by order dated August 31, 1999, the prayer for referring the dispute to Labour Court was rejected on the ground that the same was patently stale. Writ Petition No. 4358/1999 was filed challenging this order on various grounds including the ground that no period of limitation is prescribed for raising industrial dispute. However, by order dated October 4, 1999, the writ has been dismissed on the ground that it was not a fit case for interference under Article 226 of the Constitution of India. This appeal challenges the order of the learned single Judge dated October 4, 1999.

Shri M.R. Chandra, learned counsel for appellant, submits that decision of respondent No. 2 rejecting the prayer of the appellant for making reference to Central Government Industrial Tribunal is liable to be set aside since the prayer for reference cannot be rejected on the ground of delay. Shri S.P. Sinha, learned counsel for respondents, submits that this is an old matter and the proceedings terminated after participation of the appellant in the enquiry. Therefore, learned counsel submits that prayer of the appellant should not be allowed.

During the course of hearing, Shri M.R. Chandra brought to our notice the decision of the Apex Court reported in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, . In this case, the services of the workman were terminated by the management without compliance of the mandatory provisions of the Industrial Disputes Act, 1947. The dispute regarding termination of service was referred to Labour Court by the Government on March 19, 1982. By award dated April 16, 1986, reinstatement of the workman with full back wages was ordered. The management challenged the order before the High Court for quashing the award on the ground that the workman approached the Court for grant of relief after prolonged delay. Accepting the plea, the High Court held that the workman was not entitled to any relief for having slept over the matter for seven years and confronted the management with the claim at a belated stage. Judgment of the learned single Judge was confirmed by the Division Bench. However, the Apex Court, dealing with the question exhaustively and comprehensively, allowed the claim of the workman and held that no limitation was prescribed for raising the demand by the workman for seeking reference and Article 137 of Limitation Act, 1963 was inapplicable to the applications under the Industrial Disputes Act. Plea of delay by the employer is required to be proved as a matter of fact by showing real prejudice by the employer and not by way of hypothetical defence. No reference can be questioned on the point of delay. This decision has been followed by the High Court of *Cheran Transport Employees' Union Vs. Government of Tamil Nadu and Another*, . Learned single Judge has held that in the absence of any

prescribed period in the statute, merely on the ground of delay, it is not open to the Government to reject the reference for adjudication. Further, the claim of the workman cannot be rejected as "very stale" or opposed to the provisions of the Act, or inconsistent with any agreement between the parties, or patently frivolous and that it is not open to the Government to refuse reference merely on the ground that domestic enquiry was held fairly and properly and the punishment awarded was appropriate etc.

In the present case, respondent No. 2, while rejecting the prayer, passed the following order:

"The dispute has been made belatedly without giving any justifiable reasons, hence it is patently stale".

In the light of the legal position discussed above, the order dated August 31, 1999 is untenable. Respondent No. 2 could not reject the prayer for reference raised by the workman on the ground of delay and the same being without justifiable reasons. The workman has undoubtedly justifiable reasons for raising dispute in view of his removal from service in domestic enquiry and explaining the delay quite satisfactorily. Respondent No. 2 should have made reference as per demand of the workman in the facts and circumstances of the case.

Consequently this appeal is allowed.

Order of respondent No. 2 dated August 31, 1999 refusing to refer the dispute to the Central Government Industrial Tribunal is set aside. Similarly, order of learned single Judge dated October 4, 1999 is also set aside. Respondent No. 2 is directed to refer the dispute for adjudication to the Central Government Industrial Tribunal Jabalpur, within two months which shall be decided as early as possible, being an old matter. Costs on parties.