

(2022) 10 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4251 Of 2022

Bhag Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 11A, 12(4), 12(5)

Citation : (2022) 10 SHI CK 0027

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Kiran Lata, Sana, Ashok Sharma, Rajinder Dogra, Vinod Thakur, Shiv Pal Manhans, Shiv Pal Manhans, Rajat Chauhan

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The claim of the petitioner seeking Reference of the dispute to the Industrial Tribunal-cum-Labour Court, Dharamshala, was rejected by the Labour Commissioner by according the following reasons:-

Whereas an alleged industrial dispute was claimed by Shri Bhag Singh, s/o Shri Tittar Ram, r/o VPO Balh Jolli, Tehsil Joginder Nagar, District Mandi, H.P. against the Executive Engineer, H.P.P.W.D. (B&R) Division, Joginder Nagar, District Mandi, H.P. and, whereas, the Labour Inspector-cum-Conciliation Officer, Joginder Nagar, District Mandi vide report dated 17-02-2014 as provided in Section 12(4) of the Industrial Disputes Act, 1947 has submitted that the alleged dispute could not be settled during conciliation proceedings Now, therefore, the undersigned while exercising the power vested under sub section 5 of Section 12 of the Act ibid and in exercising the powers vested by the Govt. of Himachal Pradesh vide Notification No.: Shram (A) 4-9/2006-IV-Loose, Dated 15 February 2014 carefully examined the report so received and come to the conclusion that Shri Bhag Singh s/o tittar Ram, had worked with the above employer since

September 2001. He has raised the present demand notice on dated 03-10 2013 after about 6 years without explaining any reason for delay. It can be concluded that he was not aggrieved by time to time termination during 2002- 2007. Therefore, the present demand notice seems to be an after thought after about 6 years for the purpose of regularization. There is no fresh cause of action to raise an issue after about 6 long years. Thus, it can be concluded that the present dispute has faded away with the passage of time and is no more in existence. Hon'ble High Court of H.P. in CWP No. 398/2001-titled M.C. Paonta Sahib vs. State of H.P. & Others has held the similar view which was further upheld by the Full Bench of the Hon'ble Court in CWP 1486 of 2007 titled Liaq Ram vs. State of H.P. Since he has produced no evidence in support of his statements and not given any reason for an inordinate delay of about 6 years for raising the issue. Therefore, the facts and circumstances of the case do not warrant a reference to the Ld. Labour Court/ Industrial Tribunal for adjudication. All concerned be informed accordingly.

2. Aggrieved by the aforesaid order, the petitioner has filed the instant petition for grant of following relief:-

a) The Hon'ble Court may kindly set aside and quashed the order 19.12.2014 (Annexure P-5) and pass the direction to respondent No. 2 to refer the case of petitioner for adjudication to the Ld. Labour Court, Dharamshala.

3. It is not in dispute that the Reference in the instant case was filed belatedly after 6 years and what would be the effect of such delay is not required to be examined in light of the judgment rendered by the Hon'ble Full Bench in CWP No. 2190 of 2020, titled as Shri Jai Singh vs. State of H.P. & Ors., and other connected matters, decided on 30.03.2022, wherein the following principles were culled out as to the effect of delay in demanding/making Reference of the industrial dispute to the Labour Court/Industrial Tribunal under Section 10(1) of the Act:-

i) That the function of the appropriate Government while dealing with question of making reference of industrial dispute under Section 10(1) of the Act, is an administrative function and not a judicial or quasi judicial function.

ii) That the Government before taking a decision on the question of making reference of the industrial dispute has to form a definite opinion whether or not such dispute exists or is apprehended.

iii) That whether or not the industrial dispute exists or is apprehended in the meaning of Section 10(1) of the Act can be decided by the appropriate Government alone and not by any other authority including by this Court.

iv) That the appropriate Government in discharging the administrative function of taking a decision to make or refuse to make, reference of the industrial dispute under Section 10(1) of the Act, has to apply its mind on relevant considerations and has not to act mechanically as a post office.

v) That while forming an opinion as to whether the industrial dispute exists or is apprehended, the appropriate Government is not entitled to adjudicate the dispute itself on merits.

vi) That the delay by itself does not denude the appropriate Government of its power to examine advisability of making reference of the industrial dispute but the delay would certainly be relevant for deciding the basic question whether or not the industrial dispute "exists" which also includes the decision to find out whether on account of delay the dispute has ceased to exist or has ceased to be alive or has become stale or has faded away.

vii) That whether or not a dispute is alive or has become stale or non-existent, would always depend on the facts of each case and no rule of universal application can be laid down for the same.

viii) That even if Section 10(1) of the Act empowers the appropriate Government to form an opinion "at any time" on the question whether any "industrial dispute" "exists or is apprehended", and there is no time limit prescribed for taking such a decision, yet such power has to be exercised by the appropriate Government within a reasonable time.

ix) That the period for making reference of industrial dispute is co-extensive with the existence of dispute because the factum of the "existence" or "apprehension of the dispute" is conditioned by the effect of the delay on the liveliness of the dispute

x) That the appropriate Government in arriving at the decision to make a reference of industrial dispute or otherwise, in the context of delay, may examine whether the workman or the Union has been agitating the matter before the appropriate fora so as to keep the dispute alive, which however, does not necessarily mean that in a case where such action has not been initiated, the dispute has ceased to exist.

xi) That the appropriate Government can, as per Section 10(1) of the Act, take a decision on the question of making reference "at any time", thus implying that there is no limitation in taking such decision and the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to such proceedings.

xii) That the appropriate Government while taking a decision on the question of making reference, need not provide an elaborate opportunity of hearing to the workman but it is under an obligation to consider his explanation for delay in making the demand.

xiii) That in cases where the appropriate Government while examining the question of making a reference of industrial dispute arrives at a decision that the question that on account of delay the dispute has ceased to exist or alive, would require elaborate examination of the evidence, it may while making a reference of the industrial dispute, additionally formulate question on this aspect to be decided as preliminary issue while simultaneously also making a reference on the

industrial dispute to be decided as secondary issue.

xiv) That even in a case where reference has been made to the Industrial Court after prolonged delay, such Court would be entitled to mould the relief by declining whole or part of the back wages.

xv) That even when a reference is made by appropriate Government in a case after huge and enormous unexplained delay, the industrial Court would be entitled to return the reference since such Court judiciously exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act and is under obligation to consider whether in such like situation any relief at all could be granted to the workman.

4. Learned counsel for the petitioner would argue that the case of the petitioner is squarely covered under Clause 13 (supra). However, we find no merit in such contention as we are clearly of the view that the petitioner is only trying to unnecessarily agitating the stale claim, which with the passage of time, has become non-existent.

5. What constrained us to make said observation is the fact that even though the order rejecting Reference was passed on 19.12.2014 (Annexure P-5) and the petitioner has approached this Court by filing writ petition only on 24.02.2022 i.e. after a period of more than seven years.

6. In *State of M.P., v. Bhailal Bhai* reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that unreasonable delay denies to the petitioner, the discretionary extraordinary remedy of mandamus, ceriorari or other relief.

7. In *State of M.P., v. Nandlal Jaismal* reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ W.A.2097/2019 6 petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to

burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal..... Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

8. In *State of Rajasthan v. D. R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

9. In *Chairman, U.P.Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions, on the aspect of delay, at Paragraph 13, held as follows:

"13..... Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted.

10. In *S.S.Balu v. State of Kerala* reported in 2009 (2) SCC 479, at Paragraph 17, the Hon'ble Supreme Court held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded W.A.2097/2019 9 themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh*⁹ this Court held: (SCC p. 283, para 16) "16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They

did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

11. In *Virender Chaudhary v. Bharat Petroleum Corporation* reported in 2009 (1) SCC 297, the Hon'ble Supreme Court held as follows:

"The court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so. Delay and/or laches, indisputably, are the relevant factors.

12. In *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu* reported in 2014 (4) SCC 108, at Paragraphs 16 and 17, held as follows:-

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most W.A.2097/2019 11 circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

13. Thus, what can be deduced from the aforesaid exposition of law is that, in the case of belated approach writ petition normally has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

14. In addition to the aforesaid, it is well settled that exercise of discretion by the High Court, does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the

petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. This rule is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public convenience and bring in its train new injustices and when writ jurisdiction is exercised after inordinate delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on the opposite parties.

15. Delay and laches are relevant factors for exercise of writ jurisdiction. No doubt there is no period of limitation for writ petition under Article 226 of the Constitution of India but still the writ petition has to be filed within a reasonable time. There is no explanation whatsoever offered by the petitioner as to why it did not assail the order rejecting the Reference within a reasonable time. This is not the fit case where the High Court exercise its jurisdiction in favour of the petitioner.

16. That apart, we otherwise do not find any infirmity much less illegality in the order declining the Reference (Annexure P-1).

17. In view of the aforesaid discussion, we do not find any merit in the instant petition and the same is accordingly dismissed. Pending applications, if any also stand disposed of.