

(2015) 07 JH CK 0010
In the Jharkhand High Court
Case No : W.P. (L) No. 2615 of 2015

Bihar Colliery Kamgar Union

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(2)

Citation : (2015) 147 FLR 701 : (2015) 4 JLJR 486 : (2015) 4 LLJ 115 : (2016) 1 LLN 678

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : S.K. Laik, C.G.C., for the Appellant; Laxman Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking quashing of order contained in letter dated 05.11.2014 whereby, the respondent No. 1 has declined to refer the dispute for adjudication, the present writ petition has been filed. The brief facts of the case are that, on 14.06.2011, the petitioner Bihar Colliery Kamgar Union approached the Assistant Labour Commissioner (C), Dhanbad raising a dispute on behalf of one Smt. Malati Kamin alleging illegal and arbitrary action in not paying wages to her. In the said proceeding the respondent Eastern Coalfields Limited appeared and raised an objection as to maintainability. The respondent-Eastern Coalfields Limited asserted that the concerned employee was not an employee of Eastern Coalfields Limited and she never performed duty under the Management of Eastern Coalfields Limited. A failure report dated 09.04.2012 along with a copy of the application dated 14.06.2011 and the written statement of the Management dated 15.11.2011 were forwarded to the Central Government. The Central Government vide order dated 05.11.2014 declined to refer the dispute for adjudication.

2. Heard the learned counsel for the parties.

3. Relying on a decision of the Hon"ble Supreme Court in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, the learned counsel for the petitioner submits that, the impugned order contained in letter dated 05.11.2014 indicates that the respondent No. 1 has gone into the merits of the dispute which is not permissible. It is submitted that, function of the Central Government under Section 10(2) of the Industrial Disputes Act, 1947 is administrative in nature and in exercise of power under Section 10(2) of the Industrial Disputes Act, 1947 the Central Government cannot adjudicate the merits of the dispute. It is further submitted that, the length of delay in raising a dispute is not relevant rather, the appropriate Government is required to see whether in the meantime, the dispute has been kept alive. The learned counsel for the petitioner relies on decision of the Hon"ble Supreme Court in *Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others*, .

4. As against the above, the learned counsel for the respondents submits that, 35 years after the concerned employee abandoned her duty, the dispute has been raised by the petitioner Union and thus, on the face of it, it was an obsolete claim. Referring to written statement of the respondent-Eastern Coalfields Limited, the learned counsel reiterates that the concerned employee never performed duty under Eastern Coalfields Limited. Justifying the impugned order dated 05.11.2014 it is submitted that, merely because a part of the reason assigned for refusing the dispute for reference is not correct, this Court would not exercise jurisdiction under Article 226 of the Constitution of India if, interference by this Court would perpetuate illegality.

5. I find that in the application dated 14.06.2011 it was asserted that the concerned employee namely, Smt. Malati Kamin absented from duty with effect from 11.03.1974. It is stated that she was under treatment of the Management Doctors and thus, the Management was aware of her illness still, the Management did not allow her to resume her duty. However, along with the application dated 14.06.2011 no document was produced by the petitioner Union. The learned counsel for the petitioner refers to written statement dated 15.11.2011 filed by Eastern Coalfields Limited and submits that, it would appear from the written statement that the petitioner has submitted documents, referring to which the respondent Eastern Coalfields Limited denied engagement of the concerned employee with it. The learned counsel for the petitioner relies on letter dated 08.07.1974 and a chart prepared by Coal Mines Limited which would disclose that the concerned employee was engaged on 01.11.1970 under grade/group III. The impugned order contained in letter dated 05.11.2014 discloses that the appropriate Government declined to refer the dispute for adjudication on the ground that the claim was highly belated and no documentary evidence to substantiate the claim that the concerned employee was entitled to resume duty in the Eastern Coalfields Limited or she was entitled for payment of wages for idle period, was produced. No doubt, the function of

the appropriate Government in exercise of power under Section 10(2) of the Industrial Dispute Act, 1947 is administrative in nature and the appropriate Government cannot adjudicate the merits of the dispute however, it is also true that the satisfaction of the appropriate Government is not open to judicial scrutiny. From the materials brought on record there cannot be a doubt that the dispute was raised at a belated stage. The concerned employee absented from duty with effect from 11.03.1974 however, the dispute was raised on her behalf only on 14.06.2011, that is, about 37 years after the concerned employee abandoned her duty. It is not the case pleaded by the petitioner that after the concerned employee was illegally stopped from joining her duty she made representations to the management. No document was produced either before the Assistant Labour Commissioner which would indicate that the alleged dispute was kept alive by making representation to the management. Though, the Central Government has declined to refer the dispute for adjudication also on the ground that no documentary evidence to substantiate the claim was produced, I am of the opinion that though a part of reason assigned for declining the reference is not correct, the conclusion arrived at was correct. The claim on behalf of the concerned employee was raised at a belated stage. The document filed along with the supplementary affidavit discloses that the concerned employee has attained the age of 62 years. In *Asstt. Executive Engineer, Karnataka v. Shivalinga* (2002) 10 SCC 167 : LNIND 2001 SC 2251 : 2002-I-LLJ-457, the Hon''ble Supreme Court has observed as under;

"6. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale....."

6. In *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, , the Hon''ble Supreme Court has held as under:

"7. The law on the point may briefly be summarised as follows:

1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any materials before the Government to support its conclusion, as if it was a judicial or quasi judicial order.

3. An order made by the appropriate Government under Section 10 of the Act

being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. It appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus.

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

7. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, the workman who was working as a clerk with the Bank was proceeded in a disciplinary proceeding for misappropriation of a sum of Rs. 1185/- and for falsifying the books of the Bank. The workman admitted his guilt and prayed for mercy and after considering the circumstances of the case, he was dismissed from the service of the Bank. He filed an appeal which was also dismissed and thereafter, the workman received the benefits due to him under the Rules of the Bank. Seven years thereafter, the workman served a notice on the Bank alleging discrimination on the ground that two other similarly situated employees were reinstated in service however, he was dismissed from service. After a series of litigation, the Central Government made reference, "whether the action of the management of Nedungadi Bank Ltd. in dismissing Sri K.R. Madhavankutty from service with effect from 11.08.1972 is justified? If not, to what relief the workman concerned is entitled?" In these facts the Hon'ble Supreme Court observed as under:

"6. Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was *ex facie* bad and incompetent."

Considering the above facts, I am not inclined to interfere in the matter and

accordingly, the writ petition is dismissed.