

(2001) 09 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 2822 of 2000

Chief Executive Officer, Zilla Parishad

APPELLANT

Vs

Shahezadbee and Another

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 101, 114
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2002) 3 BomCR 309 : (2002) 94 FLR 479

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : H.K. Munde, for the Appellant; V.P. Golewar and N.B. Khandare, A.G.P., for respondent No. 2., for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard learned Advocates for the parties. Perused the record.

2. Rule. Rule made returnable forthwith by consent.

3. The petitioner challenges the Award dated 15th of September, 1998 passed by the Labour Court in Reference No. 71/92 on two grounds, namely, that there was unexplained delay of 10 years from the date of termination of services and the same was not at all considered by the Labour Court while deciding the matter and secondly that the Labour Court could not have ordered reinstatement of the respondent No. 1 merely on the ground of completion of 240 days in an year in the absence of service having been rendered by the respondent No. 1 in relation to a permanent post before her termination. Reliance is placed in the decisions of the learned Single Judge of this Court in the matter of The State of Maharashtra Vs. Dnyaneshwar Rakmaji Aher and another, , and another of the Apex Court in the matter of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , contending that even though there is no specific limitation provided for a reference u/s 10 of the Industrial Disputes Act, 1947, the reference cannot be

made after inordinate delay and that too without any explanation.

4. The facts, the brief, relevant for the decision are that the respondent No. 1 herein was engaged on daily wages since April, 1979 by the petitioner till 30th May, 1982. Her services were terminated with effect from 30th May, 1982 and consequently a dispute was raised and the same was referred for adjudication u/s 10 of the said Act to the Labour Court to decide whether respondent No. 1 was entitled for reinstatement with full back wages and continuity in service with effect from 30-5-1982. The claim of the respondent no. 1 was objected to by the petitioner on the ground that the respondent No. 1 did not render service for continuous 240 days and that she was only a daily wager, besides there was no post available where she could be employed. The issue regarding bar of limitation was also raised by the petitioner as the reference was made about 9 years after the alleged termination.

5. The Labour Court rejected the contention regarding bar of limitation mainly on the basis of the decision of the Apex Court in the matter of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , and two other decisions of different High Courts. On merits, it has been held that the respondent No. 1 was working in relation to the work of road Patoda-Pargaon and Daskhed-Pachangri road, during the period from 1-4-1979 to 30-5-1982 on daily wages and in the absence of any evidence being produced by the petitioner, an adverse inference has been drawn against the petitioner to hold that the respondent No. 1 had completed continuous service of 240 days in an year prior to the date of termination of her services and that therefore, she has been held to be entitled for reinstatement in the service from the date of termination with the continuity in service. The claim for back wages, however, has been rejected.

6. Section 10(1)(c) of the Industrial Disputes Act provides that where the appropriate Government is of opinion that industrial dispute exists or is apprehended, it may at any time by an order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. Apparently the provisions contained in section 10 do not prescribe any period of limitation for reference of any industrial dispute for its adjudication by the Labour Court. On the contrary, it specifically provides that it can refer the industrial dispute "at any time". In the circumstances, therefore, the point for determination which arises as to whether the reference made by the Government for adjudication can be answered in negative only on the ground of delay in referring the dispute to the Labour Court u/s 10(1)(c) of the said Act.

7. The learned Single Judge of this Court in State of Maharashtra v. Dnyaneshwar Rakmaji (supra) has held that:

"It is well settled that the Competent Authority under the Industrial Disputes Act would be justified in rejecting the reference for adjudication in respect of demands which are over-stale. At the same time when the demands which are

stale are referred for "adjudication, the claimant employee is necessarily required to explain the reasons for inordinate delay in approaching the Conciliation Officer or his inaction for such a long period. If such an explanation does not come forward or if adjudicator is not convinced by the reasons given in respect of such delay or inaction on the part of the claimant employee, the adjudicator has powers to reject the reference."

The petitioner has also referred to, as already stated above a decision of the Apex Court in The Nedungadi Bank Ltd.'s case in support of the contention that in the absence of explanation for delay, the Labour Court ought to have answered the reference in negative. However, before referring to the said decision, it would be appropriate to refer to some other decisions relevant for the decision on the point in issue.

8. In Shalimar Works Limited Vs. Their Workmen, , it was held that:

"It is true that there is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that dispute should be referred as soon as possible after they have arisen and particularly so when disputes relate to discharge of workmen wholesale, as in this case."

9. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , it was held that:

"In dealing with industrial disputes, the courts have always, emphasized doctrine of social justice, which is founded on basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While, construing the provisions of the Act, the courts have to give them a construction which should help in achieving the object of the Act."

It has been further held:

"The object of the Act, therefore, is to give succour to weaker sections of the society which is a pre-requisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life-blood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorised courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of the society keeping in view the fast changing social norms of the developing country like India."

In the said case, the Apex Court has further held thus:

"It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a

matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

It is also ruled that:

"It is not the function of the Court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature."

10. In *Nedungadi Bank's* case the Apex Court has held that:

"Law does not prescribe any time limit for the appropriate Government to exercise its powers u/s 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 lapse of about seven years of 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 u/s 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 u/s 10 of the Act in the circumstances like the present one."

11. Considering the fact that the State Government before making the reference had not considered all the relevant considerations which could clothe it with the powers to make reference u/s 10 of the said Act, the Apex Court in *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, has observed thus:

"It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference."

Apparently, the reference "existence of the Industrial Tribunal" in the last but one sentence has to be read as "existence of industrial dispute" as it appears to be a typing mistake in that regard.

12. Before making the above observation, the Apex Court had also taken note of its earlier decision in *Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited*, wherein it was held that:

"Section 10(1) confers power on the appropriate Government to refer an existing or apprehended industrial dispute, amongst others, to the Industrial Tribunal for adjudication. The dispute therefore, which can be referred for adjudication, of necessity, has to be an industrial dispute which would clothe the appropriate Government with power to make the reference, and the Industrial Tribunal to adjudicate it."

13. In *Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd.*, , the Apex Court has ruled that:

"Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period."

14. While dealing with the provisions of section 4-K of the U.P. Industrial Disputes Act, 1947 which is in tune with section 10 of the Industrial Disputes Act, 1947, the Apex Court in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, , has held that:

"Therefore, the expression "at any time", though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can "at any time" i.e., even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

15. At this stage, it is also necessary to note the ruling of the Apex Court dealing with the issue relating to the sufficient cause for delay in approaching the Court or Tribunal, in *N. Balakrishnan Vs. M. Krishnamurthy*, wherein it is held that:

"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

It is further held thus:

"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury."

16. Lastly, the Apex Court in *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, has held that:

"Though no time limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and re-kindled by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It therefore, means that if the dispute existed on the day when the reference was made by the Government it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference."

The Apex Court has further held that:

"Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The section indicates that if in the opinion of the Government the

dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute."

Considering the earlier decisions of the Apex Court, it has been further ruled therein that:

"There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication u/s 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether."

17. Considering the law laid down by the Apex Court in relation to the interpretation of section 10(1)(c) of the Industrial Disputes Act and more particularly in the matter of limitation for reference of industrial dispute for adjudication, it is now well settled that mere lapse of time would not be a justification for answering the reference in negative. In cases, where the disputes are alive, nothing prevents the Government from referring the same for adjudication merely because there is a delay from the date of dismissal till disposal of reference. Viewed from this angle, therefore, no fault can be found with the impugned Award rejecting the contention regarding delay in making reference to the Court once it is apparent from the record that the dispute was very much alive on the date of reference and it had not become a stale dispute as such. The existence of dispute on the day of reference thereof for adjudication by the Labour Court was, in fact, never in dispute. The decision of learned Single Judge in Dnyaneshwar Rakmaji Aher's case is of no help to decide the issue in the matter, as the same is only the point of necessity of justification for the delay and not on the point in issue in the matter. Likewise the decision of the Apex Court in Katiji & others is also not applicable to the matter in issue.

18. As regards the second ground of challenge the findings arrived at by the Labour Court are to the effect that the respondent No. 1 was engaged as daily wagger for the road work of Patoda to Pargaon and Daskhed to Pachangri road during the period from 1-4-1979 to 20-5-1982. It was also the contention of the respondent No. 1 that she was employed as daily wages from 1-4-1979 till 29-5-1982 and the said fact could have been very well established by perusal of the muster roll in which her attendance was recorded. It is a matter of record that the petitioner was directed to produce the muster roll for the period from April 1979 till May 1982 yet the petitioner did not produce the same for

inspection by the Labour Court and therefore the Labour Court has drawn adverse inference as regards the employment of the respondent No. 1 on daily wages for the said period and has held that she had rendered service for the period of 240 days in the year preceding to her termination. These findings apparently disclose that the respondent No. 1 was engaged as daily wager by the petitioner. However, the record nowhere discloses that the respondent No. 1 was employed in any permanent vacancy as such or that inspite of any vacancy being available, the respondent No. 1 was denied the employment by the petitioner. As regards the persons who are employed on daily wages, one cannot forget the observations of the Apex Court in the matter of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, , wherein it has been observed thus:

"The vacancies require to be filled up in accordance with the Rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to Rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Any direction for reinstatement with continuity of service which amounts to a "back door entry" cannot be upheld. In the absence of any material being placed on record that the respondent No. 1 had been employed on a permanent vacancy and admitted position being that the respondent No. 1 was employed for specific work for specific period, there was no justification for the Labour Court to issue the direction of the nature issued by it under the impugned Award.

19. In the result, therefore, the petition succeeds on the second ground of challenge. The impugned award as far as it directs reinstatement in service with continuity of service to the respondent No. 1 is hereby quashed and set aside.

20. Rule is made absolute accordingly with no order as to costs.