
(2006) 08 AHC CK 0308
In the Allahabad High Court
Case No : Writ Petition No. 5557 (M/S) of 2005

Cipla Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 2A, 4K, 6H(2)

Citation : (2006) 7 AWC 7478

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Anant Tiwari and P.N. Mathur, for the Appellant; T.N. Gupta, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the Petitioner Sri P. N. Mathur, senior advocate and perused the record.

2. No one is present on behalf of Respondent inspite of the name of the counsel for the Respondent is printed in the cause list.

3. Learned Counsel for the Petitioner states that a counter-affidavit has been filed by Respondent No. 5 and the writ petition has been listed on a number of occasions but the Respondent No. 5 is not interested in contesting the case. He further submits that the Respondents are pressing the reference.

4. By means of the instant writ petition, the Petitioner is assailing the order of reference dated 31.8.2005 and the notice dated 16.9.2005.

5. It has been stated by the Petitioner that the Respondent No. 5 was dismissed from service after the disciplinary proceedings vide order dated 31.3.1981. Thereafter, he has retired on attaining the age of superannuation on 1.1.2003. His submission is that a reference after the superannuation by the State Government is of no consequence as the Petitioner has already received all the

post retiral benefits, which was due to him, on attaining the age of superannuation.

6. It has further been submitted that the Respondent No. 5 has moved an application u/s 6H(2) of the U.P. Industrial Disputes Act before the labour court, which was rejected by means of the order dated 27.6.1985. The said order of rejection of the application u/s 6H(2) of the U.P. Industrial Disputes Act has not been challenged by the Respondent No. 5 before any forum and, as such, the order becomes final. Thereafter, the Respondent No. 5 has moved an application u/s 6F of the U.P. Industrial Disputes Act, which too was rejected by the labour court vide order dated 9.4.1985. Not being successful in the proceedings as stated hereinabove, Respondent No. 5 has moved an application alongwith the application for condonation of delay on 1.5.1985 before the Conciliation Officer u/s 2A of the U.P. Industrial Disputes Act. The Conciliation Officer, vide order dated, 5.3.1986 condoned the four years delay. Being aggrieved thereof, the Petitioner has preferred a writ petition, which was numbered as Writ Petition No. 4914 of 1986, before this Court and this Court, vide order dated 18.7.1986, stayed the operation of the order dated 5.3.1986 and also further proceedings before the Conciliation Officer in Case No. 177 of 1985. After the aforesaid orders dated 18.7.1986, the Respondent withdrew his provident fund in the year 1986 itself. Subsequently, on 12.10.2004, the above writ petition was dismissed.

7. It has been stated by the learned Counsel for the Petitioner that in the month of October, 2004, the Petitioner has received a notice from the Conciliation Officer informing them that the conciliation proceedings which remained stayed were now being reopened as the writ petition filed by the Petitioner has been dismissed. On receipt of the said notice, the Petitioner has participated in the conciliation proceedings and filed its reply on 6.4.2005 stating therein that during the long interregnum of about 24 years, several changes and occurrences have taken place which would go to question the very root of the existence of an industrial dispute at this point in time when fresh conciliation proceedings were sought to be initiated. These changes and occurrences are vital and decisive factors which are germane to the question whether an industrial dispute exists in praesenti. It was further been urged that after a lapse of 25 years, the Petitioner employer cannot reasonably be expected to have preserved the records. In this case, the employers submitted that it was very difficult for them to locate the papers and documents relating to the domestic enquiry and other proceedings. It was also pointed out that Respondent No. 5, after his dismissal from service in the year 1981 and during the pendency of the writ petition have started legal practice in this Court actively in the year 1985 and as such, the Respondent No. 5 has no right to raise an industrial dispute in praesenti claiming either reinstatement or back wages. The Petitioner-employer have discontinued their distribution operation in Lucknow and have engaged the service of a C and F agency and as such the Petitioners do not at present have any establishment in Lucknow and hence, no industrial dispute can be said to be existing in praesenti or apprehended as envisaged by the relevant provisions of the U.P. Industrial

Disputes Act.

8. Thus, the reference, which has been made on the basis of conciliation proceedings on 31.8.2005 by the State Government will in fact serve no useful purpose for referring a stale industrial dispute in presenti as the workman has reached the age of superannuation. The State Government has failed to appreciate that the Respondent No. 5 had already withdrawn his Provident Fund accumulations in the year 1986 and as such the entire case has become infructuous by efflux of time and therefore, the present reopening of the proceeding is an attempt by the workman in the nature of an opportunistic litigation. The State Government failed to apply their mind to the fact that after a lapse of about 25 years the employer cannot reasonably be expected to have preserved the records. Furthermore, the State Government, Deputy Labour Commissioner, Lucknow and the Conciliation Officer failed to appreciate that the workman-Respondent No. 5 is a member of the Oudh Bar Association, High Court, Lucknow, and has been in active practice even before 1985 and therefore, he has no right to raise an industrial dispute in praesenti claiming either reinstatement or back wages.

9. In support of the aforesaid argument before the Conciliation Officer, learned Counsel for the Petitioner has relied upon the following judgment:

1. M/s. Athertan Mills Kanpur v. State of U.P. and Ors. 1996 (73) FLR 1683 : 1996 (2) AWC 2.115 (NOC) ;
2. U.P. State Electricity Board and Anr. v. State of U.P. and Ors. 2000 (84) FLR 304 : 1999 (4) AWC 2.146(NOC) ;
3. Nedungadi Bank Ltd. v. K.P. Mudhvankutty and Ors. AIR 2000 SC 839 : 2000 (2) AWC 923 (SC) and
4. The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others,

10. A counter-affidavit has been filed by learned Counsel for the Respondent No. 5 controverting the contents of the writ petition. It has been stated in the counter-affidavit that this Court while disposing of the Writ Petition No. 4914 (SS) of 1986 provided that the labour court shall proceed into the adjudication case No. CB 177 of 1985, expeditiously and decided as far as possible within six months and it is only in compliance of the orders passed by this Court Conciliation Officer proceeded with the proceedings and refer the matter to the State Government, who in turn made a reference on 31.8.2005 and, as such, there is no illegality committed by the State Government while making a reference to the labour court. It has also been stated that superannuation has no concern with the date of termination of service. It has been further stated in the counter-affidavit that Respondent No. 5 has not withdrawn his provident fund from P.F. Account but the fact is that the Respondent No. 5 demanded loan from his P.F. Account instead of granting loan the Petitioner has sent the entire amount standing in the P.F. Account of Respondent No. 5. It has also been stated that the

instant petition is a second writ petition on the same facts and circumstances and against the same cause of action and accordingly the same is liable to be dismissed.

11. A rejoinder-affidavit has been filed by the Petitioner controverting the contents of the counter-affidavit and reiterating the contents of the writ petition is true and correct. It has been stated that the Writ Petition No. 4914 (SS) of 1986 was preferred by the Petitioner company challenging the order dated 5.3.1986 by means of which the learned Conciliation Officer, Lucknow initiated conciliation proceedings vide case No. 177 of 1985 after condoning the four years delay on the part of the Respondent No. 5 in raising a dispute u/s 2A of the U.P. Industrial Disputes Act. By means of order dated 12.10.2004, this Court had dismissed the writ petition and had directed the re-commencement of conciliation case No. 177 of 1985. In the said order, this Court had used the word "labour court" in a generic sense, without drawing any distinction between the proceedings before a Conciliation Officer or a labour court which adjudicates industrial disputes after a reference has been made. Since through the writ petition, the order of the Conciliation Officer dated 5.3.1986 had been challenged, after dismissal, the proceedings of Conciliation Case No. 177 of 1985 were revived. There was no adjudication case in existence before a labour court or Industrial Tribunal in 1985 and therefore, by the order dated 12.10.2004, the intention of this Court was to recommence the stayed conciliation proceedings. The Respondent No. 5 filed a certified copy of the said order before the learned Assistant Labour Commissioner for recommencement of the proceedings of Conciliation Case No. 177 of 1985. Thereafter, the learned Assistant Labour Commissioner issued summons to the Petitioner to participate in the conciliation proceedings. The Petitioner-company participated in the conciliation proceedings and filed their reply on 6.4.2005. The Petitioner has also filed relevant documents on 13.5.2005 regarding the fact that the workman had attained the age of superannuation, i.e., 58 years and has retired from service and further all retrieval dues has been paid to him.

12. It has further been stated that upon a reference being made by the State Government, the order of reference has been challenged before this Court and as such a challenge can only be made before a writ court and not before any other forum.

13. In the case of *M/s. Athertan Mills Kanpur v. State of U.P. and Ors.* 1996 (73) FLR 1683 : 1996 (2) AWC 2.115 this Court has held that:

It was not a case of mere lapse of time, but it is a case of long lapse of time after which a party cannot be expected to retain the evidence when admittedly the management changed more than once. The State Government in these peculiar facts and circumstances, in my opinion, ought to have applied its mind seriously to the period already lapsed which brought about material changes. An industrial dispute is not expected to remain alive for such a long time. It was also not expected from the labour unions to raise such a stale and dead claim as

industrial dispute before the State Government. In my opinion, the labour unions also miserably failed to act bona fide in raising such an old and stale claim. The law confers power on the State Government to refer a dispute and recognizes labour unions to espouse such dispute with a pious object to maintain peace and harmony in the industrial sector so that production may continue uninterrupted. Thus, the labour unions do not discharge a lesser responsibility in espousing the claim of the Workmen before the State Government for making reference, hence this responsibility should be discharged with care here failure appears on both ends.

14. In the case of U.P. State Electricity Board and Anr. v. State of U.P. and Ors. 2000 (84) FLR 304: 1999 (4) AWC 2.146 this Court has held that:

Normally a dispute which is an industrial dispute be referred by the State Government u/s 4K of the U.P. Industrial Disputes Act so long such a dispute exists or the Government apprehends that such a dispute is likely to exist. However, in a case there is undue and inordinate as well as unexplained delay, a presumption may arise on the facts and circumstances of a particular case that no dispute exists in praesenti and in such cases the reference made by the Government may be quashed. In the facts and circumstances of the present case, the Respondent No. 5 kept silence for more than 15 years and he woke up only after the petition of other co-workmen was allowed and he made no efforts to get his dispute referred to the Industrial Tribunal or labour court. Now he cannot be allowed to raise such a dispute after the lapse of such a long time.

15. In the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, 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 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. 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 industrial dispute was ex facie bad and incompetent.

It was submitted by the Respondent that once a reference has been made u/s 10 of the Act a labour court has to decide the same and High Court in writ jurisdiction cannot interfere in the proceedings of the labour court. That is not a correct proposition to state. An administrative order, which does not take into consideration statutory requirements or travels outside that it is certainly subject to judicial review limited though it might be. High Court can exercise its powers under Article 226 of the Constitution of the Labour Court. In *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, this Court observed:

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 subject-matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here is a question of jurisdiction of the industrial dispute, 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 appropriate Government lacks power to make any reference.

16. In the case of *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, the Apex Court has held that:

Before making a reference u/s 10 of the Act, the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

17. In the case of *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, wherein in para 8, the Apex Court has held that:

From the words used in Section 4(k) of the Act there can be no doubt that the Legislature has left the question of making or refusing to make a reference for adjudication to the discretion of the Government. But the discretion is neither unfettered nor arbitrary for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for adjudication. No reference thus can be made unless at the time when the Government decides to make it an industrial dispute between the employer and his employees either exists or is apprehended. 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 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.

18. In the instant case, on perusal of the pleadings, it is admitted that the Petitioner after dismissal from service in the year 1981 had started legal practice since 1985. He has withdrawn his provident fund in the year 1986 and as such, the Respondent No. 5 has no right to raise an industrial dispute in praesenti claiming either reinstatement or back wages. Further, the reference, which has been made by the State Government, is after the lapse of 25 years fully knowing the aforesaid facts also that the office of the Petitioner's company is no longer in the State of U.P.

19. In view of the legal position and coupled with the facts stated hereinabove, the writ petition is allowed. The reference dated 31.8.2005 and the notice dated 16.9.2005 are quashed.

20. No order as to costs.