
(2000) 05 DEL CK 0029
In the Delhi High Court
Case No : CWP. No. 5050 of 1998

Dharambir

APPELLANT

Vs

State of NCT of Delhi and Another

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Citation : (2000) 7 AD 1145 Supp : (2000) 57 DRJ 60

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. M. Hussain, for the Appellant;

Judgement

A.K. Sikri, J.—Facts are brief and undisputed it will be useful to state these facts first:

Petitioner was employed as chowkidar in Municipal Corporation of Delhi (hereinafter referred to as "MCD", for short) school in Khera Kalan, Delhi on 2.12.1985. His services were terminated on 25.2.1992. He kept quiet and did not challenge his termination for long. However in April 1996 he started making representations to the Office of Chief Minister, Delhi. Private Secretary of Chief Minister wrote to Director of Primary Education, MCD for taking sympathetic view. But, no favourable response was received. This all happened in the year 1996. Thereafter on 20th February, 1997 petitioner raised alleged dispute by filing statement of claim before Conciliation Officer, in the Office of Labour Commissioner, Rajpur Road, Delhi. MCD was summoned and it filed its reply showing inability to reinstate the petitioner. Conciliation proceedings accordingly ended in failure. Conciliation Officer submitted his failure report. Thereafter impugned order dated 15th June, 1998 was passed refusing to refer the matter for adjudication. This was sent to petitioner by covering letter dated 2nd September, 1998. Aggrieved against this refusal petitioner filed the present writ petition in which he has prayed for quashing the impugned order dated 15th June, 1998 with direction to the respondent No. 1 namely, National Capital Territory of Delhi (hereinafter referred to as "NCT of Delhi", for short) through

Secretary (Labour) for referring the matter for adjudication to appropriate Labour Court/Industrial Tribunal.

2. In the impugned order dated 15th June, 1998 it is stated that Secretary (Labour) had perused all the documents filed before it and submissions of the management as well as the report of the Conciliation Officer (hereinafter referred to as "CO", for short) and found that this is not a fit case for reference to Industrial Tribunal or Labour Court of Delhi for adjudication for the reasons given below:

"Cause of action arose on 25.3.92 when services of Shri Dharambir Singh are alleged to have been terminated by the management whereas the statement of the claim filed on 20.2.97 i.e. after a gap of four years, ten months and 26 days the claim is highly time barred.

3. The petitioner has challenged the aforesaid order on the ground that merely because there was delay in raising the dispute, it cannot be a ground to refuse to make reference. It is submitted by the petitioner that law of limitation is not applicable to matters under the Industrial Disputes Act (hereinafter referred to as "ID Act", for short). No period of limitation is prescribed even under the Act. He has also referred to certain judgments in support of his contention that reference could not be refused on the ground of delay. I will refer to these judgments at appropriate stage.

4. The sole question, Therefore, to be decided is as to whether appropriate government could refuse to make reference of the dispute on the ground of delay. It may be stated that the question is of utmost importance as it is seen that many times, as in the instant case, the workers raise dispute after number of years of the cause of action. Whether the dispute can still be treated as surviving? Or whether it can be said that there is no "dispute" when the concerned workmen after his, say termination, kept quiet for number of years and thus acquiesced into the action?

5. Before I proceed to deal with the aforesaid questions it would be proper to discuss the power of "appropriate Government" u/s 10 of the ID Act in referring or refusing to refer the dispute for adjudication. It is a peculiar position provided under the ID Act that an aggrieved workman cannot approach the Labour Court or Industrial Tribunal directly for adjudication of "industrial dispute". He has to seek reference of dispute to Labour Court/Industrial Tribunal) u/s. 10 of the Industrial Disputes Act. "appropriate Government" as defined u/s. 2(a) of the ID Act is empowered to refer the dispute. Section 10(1) stipulates that "appropriate Government" may at any time, by order in writing, refer the dispute to a Board, Labour Court or Industrial Tribunal where it "is of the opinion that any industrial dispute exists or is apprehended". Interpreting this section, way back in 1953 Supreme Court in the case of State of Madras Vs. C.P. Sarthy reported in (1953) 1 LLJ 174, stated the following propositions:

i. The Government should satisfy itself, on the facts and circumstances brought

to its notice, in its subjective opinion that an "industrial dispute" exists or is "apprehended";

ii. the factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the Government to decide;

iii. the order making a reference is an administrative act and it is not a judicial or a quasi-judicial act, and

iv. the order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Art. 226 of the Constitution to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended.

6. These propositions were based on unamended act which did not contain the words "whether the appropriate government is of opinion". In *Western India Match Company Vs. Western India Match Company Workers Union* reported in 1976 (2) LLJ 256, Supreme Court took support of C.P. Sarthy (supra) to hold that function of the appropriate government to make reference u/s. 10(1) is an administrative function. This view that the appropriate government is performing an administrative act and not judicial or quasi judicial act while making reference is found in various judicial pronouncements made by the apex Court even thereafter.

7. The satisfaction of the existence of an industrial dispute or the satisfaction that an industrial dispute is apprehended is "a condition precedent to the order of reference". An order of reference cannot be made mechanically without forming an opinion. For formation of the necessary opinion, the "appropriate Government" must also be satisfied that a person whose dispute is being referred for adjudication is a "workman". If the dispute is not between an employer and his workman, it is not an "industrial dispute" and the Government can justifiably refuse to refer the dispute. From the material placed before it, the Government reaches an administrative decision whether there exists an existing or apprehended industrial dispute. In either event, it can exercise the power under this Section.

8. The adequacy or the sufficiency of the material on which the opinion was formed, is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

9. When the "appropriate Government" makes a reference of an industrial dispute for adjudication, it does not decide any question of fact or law. The only condition, which the exercise of that power should satisfy, is that there should be the existence or apprehension of an industrial dispute. When once the Government is satisfied about this question, it acquires jurisdiction to refer the dispute for adjudication. However, the condition precedent to the formation of such opinion, that there should be an existing or apprehended, "industrial dispute" is imperative and the recitals of the existence or apprehension of the industrial dispute cannot preclude the judicial review from going behind those recitals and in determining whether, in fact, there was any material before the "appropriate Government" and if there was; whether the Government applied its mind in coming to the conclusion that an industrial dispute was in existence or was apprehended, and it was expedient to make the reference. Therefore, an order of reference is open to judicial review, if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration.

10. Likewise when the appropriate government refuses to make reference it is also amenable to judicial review if it is shown that the appropriate government did not take into consideration the relevant material which could show existence or apprehension of industrial dispute or if it is shown that the reasons for refusing to make reference are irrelevant or not germane to the formation of opinion.

11. It has been held in number of judgments that while performing this administrative function, the government would not decide the dispute between the parties which may be termed as judicial function and such judicial function is to be discharged by the Labour Court/Industrial Tribunal only. In *Ram Avtar Sharma Vs. State of Haryana and others* reported in 1985 (51) FLR 71 (SC), Supreme Court held that if the government, while refusing to make reference delves into the merits of the dispute, it is not permissible under law and the appropriate course to make reference and such dispute are to be settled/decided by the Labour Court/Industrial Tribunal as an adjudicatory authority. Following observations of the Supreme Court in the aforesaid case is worth noting:

"Therefore the view that while exercising power u/s 10(1) the functions performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond the pale of controversy.

Now if the Government performs an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of it. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that the industrial dispute exists or is apprehended. This may permit the appropriate Government to determine *prima facie* whether an industrial dispute exists or claim is frivolous or bogus or put forth extraneous

and relevant reasons not for justice of industrial peace and harmony. Every administrative determination must be based on ground relevant and germane to the exercise of power. If the administrative determination is based on the relevant, extraneous or grounds not germane to the exercise of power, it is liable to be questioned in exercise of the power of judicial review."

12. The question to be determined is as to whether the respondent No. 1, while refusing to make reference on the grounds stated in the impugned order has delved into the merits of the dispute or has exercised administrative function. However, as noted above, before making a reference the "appropriate Government" is to form an opinion as to whether any industrial dispute exists or is apprehended. Therefore, it is permissible for the government while forming an opinion, to take relevant facts into consideration and form the opinion as to whether industrial dispute at all exists or not. Such an exercise if, on the facts and circumstances of a particular case, based on admitted facts comes within the realm of administrative function it would be permissible for the appropriate government to indulge into this exercise while discharging this administrative function or to say while forming the opinion u/S. 10(1) of the Act.

13. In support of this proposition one may take shelter under the recent judgment of the apex Court in the case of *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, . In that case "appropriate Government" refused to make reference on the ground that the concerned employee who had raised the dispute was not "workman" within the meaning of Section 2(s) of the Act. While doing so government considered the salary and allowances drawn by the employee as well as the nature of work performed by him including his power to sanction expenses incurred by his Office. The concerned employee (respondent in the aforesaid case) filed writ petition against the Order of the "appropriate Government" refusing to make reference and High Court in that writ petition directed the government to make the reference as to whether he was a workman. Appeal filed by the appellant was also dismissed and in these circumstances the appellant preferred SLP and that is how the matter came up for consideration before the Supreme Court. Granting the leave and ultimately allowing the appeal of the appellant, Supreme Court set aside the judgment of the High Court and upheld the order of the Government refusing to make reference. Relying upon its earlier judgment in the case of *State of Madras Vs. C.P. Sarthy (supra)*, *Prem Kakar Vs. State of Haryana and Another*, and *Sultan Singh Vs. State of Haryana and another*, , the Court observed that the order u/S. 10 of the Act was an administrative order and the government was entitled to go into the question whether industrial dispute exist or is apprehended and it will be only subjective satisfaction on the basis of material on records and being an administrative order no lis is involved. The position in law was summarised as under:

1. The appropriate Government would not be justified in making a reference under S. 10 of the Act without satisfying itself on the facts and circumstances

brought, to its notice that an industrial dispute exists or 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 S.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 material 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 S.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. If 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 and;

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

Thus when the reference is refused on the ground of delay, what needs to be examined is as to whether the "appropriate Government" has rightly exercised its administrative power? In other words, whether "appropriate Government" could come to the conclusion, in such circumstances, that there was no "industrial dispute" or the industrial dispute was not worth referring for adjudication after number of years?

14. At this stage, it may be pointed out that admittedly the law of limitation does not apply to the industrial dispute. There is no limitation prescribed either in Limitation Act or under the ID Act or in any statute within it. This is now well settled by series of judgments of Supreme Court and various High Courts:

1. Bombay Gas Company Ltd. Vs. Gopal Bhiva and others reported in (1963) 2 LLJ 608.

2. Town Municipal Council, Athani Vs. Presiding Officer, Labour Court, Hubli and others reported in 1969 (2) LLJ 651.

3. Nityanand M. Joshi and another Vs. Life Insurance Corporation of India and others reported in 1969 (2) LLJ 711.

4. Vithabhai Nana Vs. Bombay Fine Worsteds Manufacturers reported in (1955) 1 LLJ 637.

5. Municipal Committee, Tarn Taran Vs. State of Punjab and Others, .

6. Hindustan Steel Ltd. Vs. State of West Bengal reported in (1977) LIC 1417.

15. However, one may hasten to add that most of these cases relate to application filed u/s 33-C(2) of the ID Act. There are certain cases available

which relate to Section 10 of the ID Act as well. However, these are the cases where reference was infact made to the Industrial Tribunal/Labour Court for adjudication and such a reference was challenged by the Management on the ground that reference could not have been made after a lapse of considerable period. Courts, however, did not set aside the reference but moulded relief. In many cases, relief of reinstatement was not granted and in some other cases backwages were not granted or reduced (Refer : Jai Bhagwan Vs. Management of Ambala Central Cooperative Bank Limited and another reported in (1984) 1 LLJ 52 , Mahavir Singh Vs. U.P. State Electricity Board and Others, and Ajayab Singh Vs. Sarhind Cooperative Marketing cum Process Service Society Limited and another reported in 1999 (1) LLJ 1260).

16. On the other hand, we have recent judgment of the Supreme Court in the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty decided on 28th January, 2000 and reported in 2000 LLR 340 wherein the Court held that although there was no time limit prescribed to exercise power u/S. 10 of the Industrial Disputes Act, power could not be exercised at any point of time to revive matters which has since been settled and stale dispute could not be subject matter of reference for adjudication. The Court went on to the extent of holding that if such stale matter is referred, High Court had the power to review judicial order of reference. It relied upon its previous judgments in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, and quote the following observations from this judgment:

"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 non apprehended which could be 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 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.

17. When this consideration weighed with the Court that the matter raised is belated and stale, and is a relevant consideration for refusing reference, then the Court undertaking the exercise of judicial review of such a decision will not interfere with the same. I may also refer to the judgment of Bombay High Court in R. Ganeshan Vs. Union of India and others reported in (1993) LabIC 802 wherein the Court held that refusing to make reference on the ground of inordinate and unexplained delay was just and proper. Following observation from the aforesaid judgment can be quoted with benefit:

"It is true that the Act does not lay down a period of limitation. This, however, does not mean that a dispute can be raised at any time, even after an inordinate delay and the Government is bound to make a reference. If there is an inordinate delay that can be a legitimate ground for holding that there does not exist in

praesenti an industrial dispute."

"It would, thus, appear that when application for making a reference is made after an inordinate delay the same can be a just and proper ground for refusing to make a reference."

18. Thus when inordinate and unexplained delay challenging the termination etc., is treated as proper ground to refuse to make reference, it means that the formation of the opinion by the appropriate government that it is no longer an "industrial dispute" or industrial dispute "does not exist" is a proper opinion.

19. We may deal with the matter from yet another angle. Even if the law of Limitation does not apply, the principle of laches and delays can be made applicable. After all, it is the "industrial dispute" which has to be referred for adjudication. To substantiate this line of thinking we may examine this aspect in the context of nature of "industrial dispute".

What is Industrial Dispute

20. Section 2(k) of the IDA defines industrial dispute and it reads as under:

""industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employments or non-employment or the terms of employment or with the conditions of labour, of any persons

21. As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and Therefore individual is given right to raise these disputes.

22. The term "industrial dispute" connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression "dispute or difference" as used in the definition, Therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in maintaining the respective contentions.

23. To understand the meaning of the word "dispute" it would be appropriate to start with grammatical or dictionary meaning of the term.

"dispute": "to argue about, to contend for, to oppose by argument" to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

24. Blacks law dictionary, 5th edition, page 424 defines dispute as under:

"A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which

issue is joined, and in relation to which jurors are called and witnesses examined.

25. Thus a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa. Hence an "industrial dispute" cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. (There is a difference of opinion among various High Courts as to how such demand should be raised and at what stage but we are not concerned with this aspect in the instant case). Therefore what would happen if no demand is made at all when the cause of action arises? In other words, like in the instant case what would be the consequence if after the termination of the services of petitioner in the year 1992 petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a dispute? Or can it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement the employer presumed that the workmen has accepted his termination and Therefore he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and Therefore accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a "dispute" what had otherwise become a buried issue.

LATCHES AND DELAYS

26. After encompassing the concept of "industrial dispute" let us relate it to second aspect: laches and delays.

27. It is now well recognised principles of jurisprudence that a right not exercised for a long time is a non-existence. Even when there is no limitation period prescribed by any Statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable Explanation for bringing the action after unreasonable delay. Doctrine of laches is infact an application of maxim of equity "delay defeats equities" (see (1875) 1 All. 82 (p. 86-87)).

28. This principle is applied in those cases where discretionary orders of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed by the petitioner under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within the period prescribed by the Limitation Act. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress

he cannot afterwards complain. This principle is based on doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and Therefore has no right to complain against that alleged wrong.

29. Thus in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles, relatable to sound public policy, that if a person does not exercise his right for a long time then such a right is non-existence.

30. The aforesaid discussion on "existence of industrial dispute" and laches and delay support the view that when the dispute is raised after long period and the "appropriate Government" refuses to refer the said dispute for adjudication, forming the opinion that it is a stale matter, the Courts may refuse to interfere with such a decision if on the facts of that case it is found that the exercise of discretion was proper.

31. To summarise, although although there is no limitation prescribed under the Act for making a reference u/S. 10(1) of the ID Act, yet It is for the "appropriate government" to consider whether it is expedient or not to make the reference. The words "at any time" used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the ID Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory Explanation for delay, as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry. Infact, way back in the year 1976 in Western India Match Company reported in 1976 (2) LLJ 256 although the Court held that reference of dispute made nearly six years after the previous refusal to make reference was valid and justified, it also made the following observations: "Government would consider these question properly and will not allow itself to be stampeded into making reference of old or stale disputes or reviving such disputes on the pressure of unions."

32. Once it is held that delay particularly unexplained delay in raising the alleged dispute is relevant consideration for "appropriate government" to refuse to make reference than exercise of such administrative function by the "appropriate government" on this relevant consideration would be treated as proper and valid

and would not be interfered with or judicially reviewed. In this case services of the petitioner were terminated on 25th February, 1992. He kept quiet and did not challenge his termination for long. Only in April, 1996 he allegedly made representation to the Office of the Chief Minister, Delhi. Even at this time he did not make any representation to his employer i.e. Municipal Corporation of Delhi, in the first instance. The statement of claim before the Conciliation Officer was filed only on 25th February, 1997 i.e. almost five years after his termination. During this period he did not take up the matter with his employer - Municipal Corporation of Delhi. In these circumstances rejection of reference by giving these reasons held to be proper and appropriate.

33. Accordingly, this writ petition challenging the impugned order dated 15th June, 1998 refusing to refer the matter for adjudication fails and is hereby dismissed. Rule stands discharged. There shall be no order as to costs.