

(2010) 03 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition No's. 340, 880, 885, 886, 887, 888, 889, 890, 891, 1091, 1092, 1093, 1094, 1095, 1096, 1105, 1106 of 2008 (M/S) , 1376, 1377, 1378, 1379, 1380, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596,

Divisional Marketing Manager and Others APPELLANT

Vs

State and Others etc. etc. RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 4, 5, 81A
Limitation Act, 1963 — Section 14
Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 19, 25N, 3, 4K

Citation : (2010) 1 UD 453

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—This group of petitions assails the validity and legality of the order passed by the Conciliation Officer whereby the application of the workman to condone the delay in referring the matter for conciliation of the dispute was allowed. In all this group of petitions, the impugned order is more or less the same, though the wordings are slightly different and, in some of them, ex-parte orders have been passed against the Petitioners.

2. The facts leading to the filing of the writ petition is, that the predecessor of the Petitioner, namely, the U.P. Forest Corporation, in the course of its usual business had engaged different kinds of workers either in a permanent capacity or on a daily rated basis or on a casual basis. The services of the workers involved in the present group of writ petitions were dispensed with mostly in the year 1995, but some of them were also dispensed with earlier in the years 1992 and 1993. The reason urged in the petitions is that the predecessor of the Petitioners found the workers to be surplus and on account of decrease in the

work load, a decision was taken to retrench the workers. It is alleged that junior most persons were retrenched after paying compensation as provided under the U.P. Industrial Disputes Act, 1947.

3. Some of the workers, being aggrieved by the retrenchment, soon thereafter, raised an industrial dispute which was eventually referred for adjudication before the Labour Court. The Labour Court, after considering the matter, gave an award holding that the workers were not entitled for any relief and held that the retrenchment was valid. The Labour Court, accordingly, declined to grant any relief to the workers. The workers, being aggrieved by the said award, filed various writ petitions. The writ court allowed the writ petitions holding that the Corporation was required to adhere to the provision of retrenchment compensation and that the provision of Section 6-N was squarely applicable upon the daily rated workers employed by the Corporation. The High Court, accordingly, directed reinstatement of the workers with continuity of service and with backwages.

4. It may be stated here that during the pendency of the writ petitions, the State of Uttarakhand was formed and the Petitioner, being the successor in interest, came into existence and, accordingly, the Petitioners challenged the order of the writ court before the Supreme Court of India. In the meanwhile, certain workers, who were retrenched in the year 1995, also filed various writ petitions before the High Court questioning the veracity and legality of the retrenchment and dispensation of the service made by the Corporation in the year 1995. These writ petitions were allowed by various judgments of the High Court holding that the dispensation of the services of the workers was illegal and that the workers were liable to be reinstated. These judgments of the High Court were also challenged by the Corporation before the Supreme Court of India and, all these petitions were clubbed together and decided by the Supreme Court by a judgment dated 12/12/2006, namely, in the matter of Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, . The Supreme Court held that the workers who had filed the writ petition directly before the High Court were not entitled for any relief and that they should have availed an alternative remedy by raising an industrial dispute under the Industrial Law. The Supreme Court observed that the High Court fell into error in entertaining the writ petition, since, there was no exceptional circumstances made out to entertain the writ petition. The Supreme Court further observed that the writ court should have dismissed the claim of the workers on the ground of laches since the workers did not get the dispute adjudicated by the Tribunal. The Supreme Court held that these workers who had approached the writ court directly were not entitled for reinstatement, backwages and continuity of service. The Supreme Court, however, upheld the claim of the workers who had raised an industrial dispute and who had come through the process of Industrial Tribunal/Labour Court and held that the Corporation, being an industrial establishment, the provision of Section 6-N of the U.P. Industrial Disputes Act was attracted and, therefore, the order of the High Court directing reinstatement of the workers was justified. The

Supreme Court observed the aforesaid findings in paragraph 43, 44, 45, 46 and 48 which are quoted hereunder:

43. We are unable to countenance the above submission of Mr. Mehta and Mr. Sangal insofar as it relates to the non-maintainability of the writ petition and the delay and laches. It is not in dispute that the effective alternative remedy was not availed by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches. We have already referred to the decision of this Court in *U.P. State Spinning Co. Ltd. v. R.S. Pandey and Anr*, (supra). This Court speaking through Arijit Pasyat, J. has held in categorical terms that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out.

44. In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute the High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The Respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition.

45. We are, therefore, of the opinion that the writ Petitioners (Respondents herein) who have not invoked the jurisdiction of the Tribunal are not entitled to any relief in the writ petitions. They are not entitled for any benefits of reinstatement, back-wages and continuity of service.

46. On the other hand, the Respondents in civil appeals arising out of special leave petitions as detailed infra who approached the Tribunal and the High Court are entitled for the relief of reinstatement, back-wages and continuity of service in view of our finding that the Appellant-Corporation is an Industrial Establishment and that provisions of Section 25N of the Industrial Disputes Act are attracted.

48. For the foregoing reasons, we hold that the provisions of Section 25-N of the Industrial Disputes Act, 1947 are attracted and non-compliance of the said section makes retrenchment order illegal and non est.

Against certain other orders passed by the High Court, the Petitioner preferred SLP No. 13975 of 2004 which was disposed of by the Supreme Court by an order dated 7th March, 2007 in terms of the earlier judgment dated 12/12/2006. The

Supreme Court, however, observed that it would be open to the workman to approach the appropriate forum for any relief. The order of the Supreme Court dated 7th March, 2007 passed in the aforesaid SLP is quoted hereunder:

Delay condoned. Heard both sides.

Both sides agreed that SLP (C) No. 85561/2004 are covered by the judgment dated 12/12/2006 delivered by this Court in Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors., 2006 (13) SCALE 556 . We, therefore, dispose of the above two SLPs. in the light of the judgment dated 12/12/2006 (Supra), reported in Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors., 2006 (13) SCALE 556 . However, the learned Counsel for the workmen seeks permission to approach the Labour Court for redressal. It is upto the workmen to approach in appropriate forum for any relief. These two SLPs. are disposed of accordingly.

Post SLP (C) No. 13975/2004 in usual course.

5. Pursuant to the aforesaid observations made by the Supreme Court, the workers whose claim was dis-allowed by the Supreme Court as well as several other workers who were watching the drama on the sideline, filed various applications before the Conciliation Officer praying for the settlement of their dispute with their employer. These applications were filed in the year 2007. For facility, the facts of writ petition No. 889 of 2008 (M/S) is being taken into consideration. Alongwith the said application, an application was also filed for condoning the delay in referring the matter for the settlement of the dispute. The ground urged in the said application was that the delay was not on account of any laches and that the delay was bonafide and genuine, in as much as, the employers had given an assurance to the workers for their re-engagement. It was further alleged that even otherwise, there is no time frame for raising the dispute and that it was open to the workers to raise a dispute at any moment of time.

6. The Petitioners filed their objections to the application for condonation of delay and submitted that no plausible explanation for the delay was given by the workers. Further, the application was not maintainable, in as much as the U.P. Forest Corporation, the predecessor of the Petitioner, was not arrayed as a necessary party. The Petitioners further contended that the Petitioner had nothing to do with the engagement or with the dispensation of the services of the workers and that the grievance, if any, of the workers was against the U.P. Forest Corporation.

7. The Conciliation Officer, after considering the matter, held that as per the decision of the Supreme Court in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, , there is no time frame for raising an industrial dispute and held that a reference cannot be set aside only on the ground of delay and, that as held by the Supreme Court, the delay in raising a dispute could only be a mitigating factor for moulding the relief for the parties. The Conciliation

Officer, consequently, condoned the delay and directed the conciliation proceedings to be registered for conciliation. The Petitioner, being aggrieved by the order of the Conciliation Officer condoning the delay, has preferred the writ petition.

8. Heard Shri B.C. Pandey, the learned Senior Counsel duly assisted by Shri Virendra Kaparwan for the Petitioners, Shri Subhash Upadhyaya, the learned Brief Holder for the State Government and Shri Jitendra Chaudhary, Shri Vinay Kumar, holding brief of Shri M.S. Bist, Shri Shailendra Nauriyal, Shri B.S. Mehra, holding the brief of Shri M.C. Pant, Shri Devesh Bishnoi and Shri Mangal Singh Chauhan, the learned Counsel appearing for various set of workers in various writ petitions.

9. Shri B.C. Pandey, the learned Senior Counsel submitted that the application of the workman for the conciliation of the dispute was admittedly filed after more than 12 years and that no plausible explanation was given for the delay. Consequently, such old and stale dispute could not be raised and, since only existing or apprehended dispute could be referred under Rule 4 of the U.P. Industrial Disputes Rules, the discretion exercised by the Conciliation Officer in condoning the delay was not valid. The learned Counsel further submitted that the judgment of the Supreme Court in the case of Sapan Kumar Pandit (Supra) was wrongly relied upon and, that the said judgment has been distinguished by the Supreme Court itself in various judgments subsequently delivered. The learned Counsel further submitted that there was no master and servant relationship between the Petitioner and the workers and that the predecessor of the Petitioner, namely, the U.P. Forest Corporation was a necessary party who was not arrayed as a party and, therefore, on account of non-joinder of a necessary party, no industrial dispute could be referred or raised nor could be settled in conciliation proceedings. The learned Counsel, consequently, submitted that the order of the Conciliation Officer condoning the delay was wholly illegal and is liable to be quashed. In support of his submission, the learned Counsel placed reliance upon various decisions which would be discussed hereinafter at the appropriate place.

10. On the other hand, Shri Jitendra Chaudhary, the learned Counsel for some of the workers held that even though the grounds for condoning the delay was not happily worded in the application, nonetheless, the workers had pursued the remedy in a writ jurisdiction under Article 226 of the Constitution of India which was allowed by the High Court, but, subsequently, reversed by the Supreme Court on the ground that the workers should have availed the alternate remedy of raising the dispute under the industrial law. The learned Counsel submitted that the remedy pursued by the Petitioner was done bonafidly and, after the dismissal of their claim by the Supreme Court on the ground of alternate remedy, the workers have approached the correct forum by raising an industrial dispute before the Conciliation Officer. The learned Counsel submitted that the workers should not be non-suited on the ground of delay, since, an industrial dispute

remains in existence. The learned Counsel submitted that since a benefit has been provided by the High Court as well as by the Supreme Court to certain sections of workers, the workers are also entitled for a similar relief. The learned Counsel submitted that the Petitioner is also entitled to the benefit of Section 14 of the Limitation Act, and that, the Conciliation Officer rightly exercised his discretion in condoning the delay and registering the case. The learned Counsel placed reliance upon certain decisions which would be referred hereinafter.

11. The rival parties have advanced their contention on the question whether old and stale dispute could be referred or not. The Supreme Court in a catena of cases, right from *Shalimar Works Limited Vs. Their Workmen*, till recently in the case of *Steel Authority of India Ltd. and Anr. v. State of West Bengal and Ors.* AIR 2008 SCW 7019 has held that there is no time frame for raising an industrial dispute under the Industrial Disputes Act and that each case has to be considered on its own facts and circumstances. The Supreme Court held that the necessary ingredients is, that the industrial dispute should be an existing one or is apprehended and, in that light, the delay, if any, has to be considered.

12. In order to elucidate the submissions made by the learned Counsel for the parties, Rule 4 of U.P. Industrial Disputes Rules, 1957 which is applicable is extracted hereunder:

(4. Powers, procedure and duties of Conciliation Officers. - (1)On receipt of information about an existing or apprehended industrial dispute, the Conciliation Officer may, if he considers necessary, forthwith arrange to interview both the employers and the workmen concerned with the dispute at such place and time as he may deem fit and endeavour to bring about settlement about the dispute in question.

(2) The Conciliation Officer may hold a meeting of the representatives of all the parties jointly or of each party separately.

(3) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

(4) Where a reference has been made by the State Government in the matter of a dispute u/s 4K of the Act to the Tribunal or Labour Court or the Adjudicator, the Conciliation Officer concerned shall forthwith forward to the Tribunal or the Labour Court or the Adjudicator concerned, the file of the Conciliation Board relating to that matter, immediately after the application in Form I is filed by the Union.)

13. A perusal of the aforesaid indicates that where an existing or apprehended industrial dispute is received by the Conciliation Officer, he would make an endeavour to arrange or interview the workers and bring about a settlement about the dispute in question. If a settlement is arrived at, the same would proceed as per the Rule 5 of the Rules and, if no settlement is arrived at, the Conciliation Officer would submit a failure report to the State Government. In

furtherance to the provision of Rule 4 of the Rules, the State Government issued a notification No. 738 dated 31st December, 1957 u/s 3(d) of the U.P. Industrial Disputes Act with regard to reference of dispute to a Conciliation Board. For ready reference, the said notification is extracted hereunder:

published in the U.P. Gazette, Extraordinary,

dated December 31, 1957/Pausa 10, 1879 Saka Era.

LABOUR (A) DEPARTMENT

Dated Lucknow, December 31, 1957.

No. 738 (ST)/XXXVI-A-112 (ST) 1957. - WHEREAS it is necessary in the opinion of the State Government so to do for securing the public safety and convenience and the maintenance of public order and supplies and services essential to the life of the community, and for maintaining employment;

Now, THEREFORE, in exercise of the powers conferred by Clause (d) of Section 3 of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), the Governor of Uttar Pradesh is pleased to make the following order and to direct, with reference to Section 19 of the said Act, that notice of this Order is given by publication in the official Gazette:

1. Definitions - In this Order, unless there is anything repugnant in the subject or context, -

(a) "Act" means the U.P. Industrial Disputes Act, 1947;

(b) "Chairman" means the Chairman of a Conciliation Board;

(c) "Form" means a form given in the Schedule to this order; and

(d) "Labour Commissioner" means the Labour Commissioner, Uttar Pradesh.

2. Reference to disputes to Conciliation Boards. - (1) An application for the settlement of an industrial dispute may be made before the Conciliation Officer of the area concerned in Form -

(i) in the case of a workman -

(a) subject to the provision of Sub-section (3) of Section 6I, by an officer of a union of which he is a member, or by an officer of a Federation of Unions to which such union is affiliated; or

(b) where no union of workmen exists by five representatives of the workmen employed in a concern or industry, duly elected in this behalf by a majority of the workmen employed in that concern or industry at a meeting held for the purpose; and

(ii) in the case of an employer -

(a) by the employer himself ; or

(b) by an officer of a union or association of employers of which the employer is a member; or

(c) by an officer of a Federation of Unions or associations of employers, to which the union or association referred to in Clause (b) above is affiliated ; or

(d) Where the employer is an incorporated company or other body corporate by the agent, manager or other principal officer of the corporation:

Provided that no such application shall ordinarily be entertained by the Conciliation Officer if it is in respect of a dispute arising more than six months previous to the date of the application, or if the dispute has already been the subject of proceedings before a Conciliation Board, a Labour Court or a Tribunal and finally settled:

Provided further that, notwithstanding anything contained in the foregoing proviso, the Conciliation Officer may entertain an application, if he is satisfied that the applicant had sufficient cause of not making it earlier;

Provided also that, notwithstanding anything hereinbefore contained, the Labour Commissioner, or the State Government may refer a dispute to any Conciliation Officer for settlement by a Conciliation Board.

(2) Where a Conciliation Officer refuses to entertain an application, he shall record in writing his reasons for such refusal and communicate them to the applicant who may, within one month of the receipt thereof, represent against such order of the Labour Commissioner at Kanpur whose decision in the matter shall be final.

(3) Constitution and Composition of Conciliation Boards. - Where an industrial dispute exists or is apprehended and an application has been duly made and entertained, or where a reference has been made to him by the Labour Commissioner or the State Government under Clause 2 above, the Conciliation Officer shall constitute a Board and refer the dispute to it for promoting the settlement of such dispute. The Board shall consist of -

(i) The Conciliation Officer, who shall be its Chairman, and

(ii) Two members - one to represent each of the parties to the dispute - who shall be appointed by the Conciliation Officer on the recommendation of each party:

Provided that if any party fails to make a recommendation in this behalf within such time as may be specified by the Conciliation Officer, or if the member representing any part fails to attend any meeting or proceeding of the Board, the Chairman shall be competent to conduct the business of the Board notwithstanding the absence of such members.

(4) Functions of Boards.- When a dispute is referred to a Board it shall be its duty to endeavour to bring about a settlement of the dispute, and for this

purpose the Board shall, in such manner as it thinks fit, and without delay, investigate the dispute and all matters affecting the merits and a just settlement thereof, and may do all such things as it thinks fit for the purpose of inducing the parties to come to an amicable settlement.

14. A perusal of the aforesaid Clause (2) of the aforesaid notification indicates that an application for settlement of an industrial dispute could not be ordinarily entertained by the Conciliation Officer, if the said application was filed after six months from the date of the said dispute but the Conciliation Officer could entertain an application if he was satisfied that the applicant had sufficient cause for not making it earlier. At this stage, Section 4-K of the Act is required to be considered and is being extracted hereunder:

4-K. Reference of disputes to Labour Court or Tribunal. - Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication:

Provided that where the dispute relates to any matter specified in the Second Schedule and is not like to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court.

15. A perusal of the aforesaid provision indicates that where the State Government is of the opinion that an industrial dispute exists or is apprehended, it may, at any time, refer the dispute to a Labour Court or Industrial Tribunal as the case may be. This provision is more or less the same as Rule 4 of the Rules, 1957.

16. Most of the judgments advanced by the learned Counsel for the parties are on the question of belated reference being made by the State Government u/s 4-K or u/s 10 of the Industrial Disputes Act. The principle evolves in these judgments will, however, be applicable to the procedure adopted by the Conciliation Officer while settling a dispute. A bare perusal of Rule 4 of the Rules read with Notification dated 31st December, 1957 indicates that where an industrial dispute exists or is apprehended, upon an application being made, the Conciliation Officer will make an endeavour to bring the parties before any forum and settle the dispute. The Notification of 1957 provides that as far as possible, the application should be filed within six months from the date of the dispute and, in exceptional circumstances, the application could be entertained even after the expiry of the aforesaid period. The upshot of the aforesaid provision is, that the matter should be settled between the parties at the earliest and should not be allowed to linger on causing the dispute to become stale.

17. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , the Supreme Court, after considering the provision of Section 10 of the Industrial

Disputes Act which is *pari materia* to the provision of Section 4-K of the Industrial Disputes Act, held as under:

6. 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 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 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 an industrial dispute was *ex facie* bad and incompetent.

18. Similarly, the Supreme Court in *Reserve Bank of India v. Gopinath Sharma and Anr.* 2006 SCC 1298 while relying upon *Nedungadi Bank Ltd. (Supra)* case held as under:

20. The case of *Sudamdih Colliery of Bharat Coking Coal Ltd. v. Workmen in turn*, refers to the judgments in *Nedungadi Bank Ltd. v. K.P. Madhavankutty* and *S.M. Nilajkar v. Telecom District Manager*. This Court held that even though there is no limitation prescribed for reference of disputes to an Industrial Tribunal, even so it is only reasonable that the disputes should be referred to as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen. This Court has held that a delay of four years in raising the dispute even after re-employment of most of the old workmen was held to be fatal. In *Nedungadi Bank Ltd.* case this Court held a delay of seven years to be fatal and disentitled the workmen to any relief.

21. In our opinion, a dispute which is stale could not be a subject-matter of reference.

19. Similar view was reiterated by the Supreme Court in *Haryana State Co-op. Land Development Bank v. Neelam* AIR 2005 SCW 1439 and *U.P. State Road Transport Corporation Vs. Babu Ram*, wherein the Supreme Court held that the onus of showing that the industrial dispute was raised within a reasonable time was upon the workman and he alone was responsible for the delay, if any. The Supreme Court further held that the Courts must record a finding on the question of delay and should not condone the delay on the basis of surmises and

conjectures. In *Personal Manager, S.B.I. and Anr. v. Krishna Grameena Bank Employees Union and Anr.* AIR 2007 SCW 7669, the Supreme Court held that in so far as the delay in seeking the reference is concerned, no formula of universal application should be laid down and that it would depend upon the facts and circumstances of each individual case. Similar view was reiterated by the Supreme Court in *Steel Authority of India Ltd. and Anr. v. State of West Bengal and Ors.* AIR 2008 SCW 7019.

20. On the other hand, the Supreme Court in *Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and Anr.* AIR 1999 SCW 1051 held that even though, there was a delay of seven years in raising the dispute, the dispute was an existing one and the Court should mould the relief appropriately while deciding the matter on merits. The Supreme Court held:

6. The history of the legislation with respect to the industrial disputes would show that for the first time in the year 1920 the Trade Disputes Act was enacted which provided for courts of enquiry and Conciliation Boards and forbade strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for settling of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the State intervention in the settlement of industrial disputes and armed the Government with the power which could be used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint Conciliation Officers for mediating in or promoting the settlement of industrial disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81-A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lockouts during the pendency of the conciliation or adjudication proceedings. The Industrial Employment (Standing Orders) Act, 1946 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8-10-1945 which embodied the essential principles of Rule 81-A of the Defence of India Rules and also certain provisions of the Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March 1947 and became the law w.e.f. 1-4-1947. The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes analogous and incidental thereto. The emergence of the concept of a welfare State implies an end to the exploitation of workmen and as a corollary to that collective bargaining came into its own. The legislature had intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to

give succour to weaker sections of society which is a prerequisite 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 the lifeblood 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 society keeping in view the fast-changing social norms of a developing country like India. It appears to us that the High Court has adopted a casual approach in deciding the matter apparently ignoring the purpose, aim and object of the Act.

21. Again, the Supreme Court held in paragraph 12:

We, are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the Appellant-workman some part of the back wages.

22. Similar view was reiterated by the Supreme Court in *Sapan Kumar Pandit* (Supra):

15. 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 galvanised 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 has 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. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination.

23. Similarly, the Supreme Court in *S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka* AIR 2003 SCW 2196 held as under:

17. It was submitted on behalf of the Respondent that on account of delay in raising the dispute by the Appellants the High Court was justified in denying relief to the Appellants. We cannot agree. It is true, as held in *Shalimar Works Ltd. v. Workmen* that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A

delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in *Shalimar Works Ltd. v. Workmen*. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty* a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan Chandra Sammanta v. Union of India* it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the Appellants to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the Appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Labour v. Union of India* the Department was formulating a scheme to accommodate casual labourers and the Appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the Scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the Appellants deserve to be non-suited on the ground of delay.

24. In the light of the aforesaid, this Court is constraint to observe what the Supreme Court much earlier observed in the case of *Shalimar Works Ltd.* (Supra). The Supreme Court in this case 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 disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale, as in this case.

25. From the aforesaid, it is clear that there was no limitation prescribed for reference of a dispute to a Labour Court or a Tribunal and that it is only reasonable that a dispute should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, more so, when the dispute relates to a dismissal, discharge or retrenchment of the workman.

26. The crux of the various decisions of the Supreme Court is that the dispute which is stale should not be a subject matter of reference u/s 4-K of the U.P. Industrial Disputes Act. The Supreme Court further held that as to when a dispute could be said to become stale or old would depend on the facts and circumstances of each case.

27. In the light of the aforesaid, the word "exists" in relation to an industrial dispute or in relation to a dispute being apprehended has to be read in conjunction with the words "at any time" and these words are complementary to

each other. The power of the Conciliation Officer to settle a dispute in conciliation proceedings has one limitation of time, namely, that it can be done only so long as the dispute exists or is apprehended. Consequently, if an opinion is formed that a dispute exists, then it becomes immaterial about the number of years which has elapsed as held by the Supreme Court in *Sapan Kumar Case* (Supra), namely, "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."

28. In the light of the aforesaid, this Court finds that the dispute occurred in the year 1995 when the services of the workers were dispensed with enmasse. A large number of workers raised a dispute under the industrial law which was referred for adjudication and which travelled right upto the Apex Court and, eventually, finality was given by the Supreme Court in December, 2006. Certain set of workers did not avail the remedy of raising an industrial dispute but preferred to redress their grievances in filing a petition under Article 226 of the Constitution of India. The Supreme Court held that these workers should have availed the alternative remedy by raising an industrial dispute and, consequently, declined to grant them the relief which the Supreme Court granted the relief of reinstatement to other workers who had raised an industrial dispute. Till 2006, the matter remained alive. The dispute remained in existence and, consequently, upon the decision of the Supreme Court, the workers whose claim was denied by the Supreme Court on the ground of not availing the remedy of raising an industrial dispute, consequently, filed an application before the Conciliation Officer alongwith an application for condoning of delay. There were some other workers who were sitting on a fence and, upon the decision of the Supreme Court, applied for a similar relief and, when the relief was not given by the employers, they also approached the Conciliation Officer for the settlement of their dispute.

29. In the facts and circumstances of the case as narrated aforesaid, it is clear that the dispute remained in existence and, it had not come to an end. It cannot be said that it was an old and stale dispute which could not be referred for adjudication. It is a different matter altogether as to whether in the ultimate analysis, the dispute, if referred, as to what appropriate relief would the workers be entitled to, it would depend upon facts and circumstances of each case and upon the material evidence being brought on record and the discretion that would be exercised by the industrial court. But, even otherwise, if there is a failure report and the matter is not settled between the employer and the employee, the State Government could still form an opinion about the existence and expediency of the dispute. At the present moment, it is only the first threshold of the settlement of a dispute for which an application has been filed. Such an application has only been entertained and the delay has been condoned. In my opinion, against the order allowing the application for condoning the delay, no writ petition is maintainable and such matter could be challenged after the award is made or even at the stage when a reference is made. At the moment,

the matter is premature. The Petitioners have un-necessarily rushed to this Court.

30. The learned Counsel for the Petitioner submitted that the benefit of Section 14 of the Limitation Act is also applicable and such benefit can be given to the workers since the workers were bonafidely pursuing the matter before another forum. In my opinion, the submission of the learned Counsel for the Petitioner is valid and has to be accepted in the light of the decision of the Supreme Court in the case of P. Sarathy v. State Bank of India AIR 2000 SCW 1978, wherein the Supreme Court held as under:

It will be noticed that Section 14 of the Limitation Act does not speak of a "Civil Court" but speaks only of a "Court". It is not necessary that the Court spoken of in Section 14 should be a "Civil Court". Any Authority or Tribunal having the trappings of a Court would be a "Court" within the meaning of this Article.

31. The submission of the learned Counsel for the Petitioners that there was no master and servant relationship and that the dispute, if any, was with the predecessor of the Petitioners and that the U.P. Forest Corporation should have been arrayed as a necessary party, in my opinion, such grounds cannot be taken into consideration at this stage and it would be open to the Petitioner to raise such grounds before the appropriate authority at the time when the matter is being conciliated between the parties.

32. In the light of the aforesaid, the writ petitions are dismissed with cost of Rs. 2,000/- in each petition.