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**(2007) 09 MP CK 0091**  
**In the Madhya Pradesh High Court**

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| Dy. C.M.E. Sub Area Manager     | Vs | APPELLANT  |
| Union of India (UOI) and Others |    | RESPONDENT |

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**Date of Decision :** 27-09-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 10, 12, 22

**Citation :** (2008) 116 FLR 421 : (2007) ILR (MP) 1187 : (2008) 2 JLJ 85 :  
(2008) 1 LLJ 312 : (2008) 1 MPHT 28 : (2008) 1 MPLJ 60

**Hon'ble Judges :** A.K. Patnaik, C.J;S.S. Jha, J;A.M. Sapre, J

**Bench :** Full Bench

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## Judgement

A.K. Patnaik, C.J.

This is a reference made to the Full Bench pursuant to the order dated 21-8-2001 passed by the learned Single Judge in the present writ petition on interpretation of Section 10(1) of the Industrial Disputes Act, 1947 (for short "the Act").,

The facts as stated in the order dated 21-8-2001 of the learned Single Judge are that the respondent No. 2 raised an industrial dispute before the Assistant Labour Commissioner (Central) by its letter dated 23-2-1995 contending inter alia that 152 contract workers deserve to be regularised and by not doing so, the Management has committed a gross illegality. The conciliation proceeding failed and the Conciliation Authority submitted a failure report dated 15-12-1995 to the Central Government. The Central Government by its order dated 27-12-1996 declined to make the reference on the ground that the respondent No. 2 Union failed to give any documentary evidence to prove that the workmen in question were engaged directly by the Management of the SECL and the dispute had been raised belatedly after 11 years and the Union had failed to give any justification for the inordinate delay. The respondent No. 2 challenged the order dated 27-12-1996 of the Central Government in W.P. No. 3088 of 1998 before this Court and the learned Single Judge held in his order dated 14-1-2000 that the

order passed by the Central Government was unsustainable and directed the Central Government to take a fresh decision in accordance with law after applying its mind within a period of two months from the date of receipt of the order of the Court. Thereafter, the Central Government passed a fresh order dated 11-4-2000 referring the following dispute to the Central Government Industrial Tribunal, Jabalpur:

Whether the action of the management of M/s. South Eastern Coalfields Ltd. in not regularising the services of 152 contract workers (list enclosed) is legal and justified? If not, to what relief the workmen concerned are entitled?

Aggrieved by the order dated 11-4-2000 of the Central Government, the petitioner management filed the present writ petition contending that the dispute referred to the Industrial Tribunal was a stale one as the 152 contract workers were removed in the year 1984 and the dispute was raised before the Conciliation Officer in the year 1995. In support of this contention, the petitioner relied upon the decision of the Supreme Court in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, .

The respondent No. 2 on the other hand, contended before the learned Single Judge *inter alia* that in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, , the Supreme Court has taken a view that a plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and this can only be done by the employer before the Industrial Tribunal and that the order of reference made by the Government u/s 10(1) of the Act, therefore, should not be quashed by the Court. The respondent No. 2 also relied on a decision of a Division Bench of this Court in *Anand Kumar Dubey Vs. Union of India (UOI) and Others*, , and a decision of a learned Single Judge in *Ramsewak v. Union of India and Ors.* W.P. No. 3695 of 2000, decided on 29-3-2001 in which refusal on the part of the appropriate Government to make a reference on the ground that the dispute was a belated one had been held to be bad.

After considering the contentions of learned Counsel for the petitioner and the respondent No. 2 and the decisions cited by them, the learned Single Judge observed in Paragraph 6 of the order dated 21-8-2001 that the core question that falls for consideration is whether stale claims can be rejected by the Central Government on the ground that the Industrial Dispute does not exist, and in Paragraph 12 of the order, further observed that this was an important question of law, which should be adjudicated by a Larger Bench so that an authoritative pronouncement in this regard is made available for future guidance. The reference has accordingly been made to this Full Bench.

Mr. N.S. Kale, learned Senior Counsel assisted by Mr. Kapil Patwardhan, learned Counsel appearing for the petitioner submitted that a plain reading of Section 10(1) of the Act makes it clear that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time

by order in writing, make a reference. He submitted that where therefore a stale claim is made on behalf of the workmen and at the time of making the reference, the industrial dispute does not really exist, the order of reference passed by the Government referring the dispute is without jurisdiction and has to be quashed by this Court in exercise of its powers under Article 226 of the Constitution. He has cited the decisions of the Supreme Court in Haryana State Coop. Land Development Bank Vs. Neelam, , in support of his contention that a reference of an industrial dispute, which is stale and belated, is incompetent and without jurisdiction and is liable to be quashed by the High Court in exercise of its powers under Article 226 of the Constitution. He submitted that the facts of the present case would show that the contract workers were terminated as far back as in 1984 and that the conciliation proceedings were started in 1995, 11 years after the termination of the contract workers and, therefore, the reference that is made by the Central Government by its order dated 11-4-2000 is without jurisdiction and is liable to be quashed under Article 226 of the Constitution by the Court.

Mr. Naman Nagrath, learned Counsel appearing for the respondent No. 2, on the other hand, relied on the decision of the Supreme Court in Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Sendee Society Limited and Ors. (supra), and contended that an order of reference made u/s 10(1) of the appropriate Government to the Industrial Tribunal cannot be challenged on the ground that the industrial dispute referred to in the order of reference is a belated one because there is no limitation provided in the Act for making a reference u/s 10(1) of the Act. He submitted that the Management, however, can raise a plea before the Industrial Tribunal or the Labour Court to whom the reference is made, that the relief claimed by the workmen should not be granted considering the fact that the dispute raised by the workmen is a stale one and it is for the Industrial Tribunal and the Labour Court to consider the facts and circumstances of the case and mould the relief accordingly. He also cited the decision of this Court in Anand Kumar Dubey v. Union of India and Ors. (supra), in which the Division Bench quashed the order of the Government refusing to make the reference on the ground that the dispute had been made belatedly without giving justifiable reasons and was patently stale after holding that the workmen had in that case undoubtedly justifiable reasons for raising the industrial dispute in view of his removal from service in domestic enquiry and had also explained the delay quite satisfactorily. He also cited the decision of the Supreme Court in State of Madras Vs. C.P. Sarathy and Another, , for the proposition that so long as an industrial dispute exists or is apprehended, the order of the appropriate Government making a reference u/s 10(1) of the Act cannot be challenged because a wide discretion has been vested with the Government u/s 10(1) of the Act to make a reference where an industrial dispute exists or is apprehended. He submitted that the decision of the Supreme Court in Madras State v. C.P. Sarathy (supra) was relied upon by the Supreme Court in The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, , to hold

that the order made by the appropriate Government u/s 10 of the Act was an administrative order and such an order was made on the subjective satisfaction of the appropriate Government and it will however be open for the party to show that was referred by the appropriate Government was not an industrial dispute within the meaning of the Act. He submitted that thus so long as an industrial dispute exists or is apprehended and the appropriate Government makes the reference u/s 10(1) of the Act for industrial adjudication of the dispute, the High Court in exercise of its powers under Article 226 of the Constitution cannot interfere with the order of reference passed by the appropriate Government.

Section 10(1) of the Act, which is to be interpreted in this case is quoted herein below:

10. Reference of disputes to Boards, Courts or Tribunals.-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c):

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

The language of Section 10(1) of the Act would show that where the appropriate Government is of the opinion that an industrial exists or is apprehended, it may

at any time by order in writing refer the industrial dispute to one of the authorities mentioned in Clauses (a) to (d) thereof for industrial adjudication. Thus, the pre-condition for making an order of reference u/s 10(1) of the Act is the existence or the apprehension of an industrial dispute. Once an industrial dispute exists or is apprehended, the appropriate Government has the jurisdiction or power to make an order of reference u/s 10(1) of the Act. The word "may" in Section 10(1) of the Act confers a wide discretion in the appropriate Government whether to exercise such jurisdiction or power conferred on it u/s 10(1) of the Act.

In *Madras State v. C.P. Sarathy* (supra), a Constitution Bench of the Supreme Court considered the power of the appropriate Government u/s 10(1) of the Act and held that in making a reference u/s 10(1) of the Act, the appropriate Government is doing an administrative act and the fact that it was to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character and the Court cannot, therefore, canvass the order of reference closely to see if there was any material before the appropriate Government to support its contention as if it was a judicial or quasi-judicial determination. Relevant portion from Para 14 of the judgment of the Supreme Court as reported in the AIR is quoted herein below:-

...But it must be remembered that in making a reference u/s 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of 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 determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act and, that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, 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....

It will be clear from the observations of the Supreme Court in Para 14 of the judgment quoted above that where the appropriate Government makes a reference so long as an industrial dispute exists or is apprehended, it was not competent for the Court to hold that the reference was bad and quash the proceedings for want of jurisdiction and whether it was expedient to make a reference or not was entirely within the wide discretion of the appropriate

Government.

Following the aforesaid decision of the Supreme Court in the State of Madras v. C.P. Sarathy (supra), the Supreme Court held in Secretary, Indian Tea Association v. Ajit Kumar Barat and Ors. (supra), that an order of reference made by the appropriate Government is an administrative order and not a judicial or quasi-judicial one and as such, an order is made to the subjective satisfaction of the appropriate Government but it would be open to a party to show that what was referred by the appropriate Government was not an industrial dispute within the meaning of the Act.

A Division Bench of this Court in Rewa Coal Fields Ltd., Dhanpuri, Shahdol and Another Vs. Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur and Others, , has also held that Sub-section (1) of Section 10 of the Act is worded in wide language and enables the appropriate Government to make a reference at any time when it is of the opinion that any industrial dispute exists or is apprehended and the power conferred by the Sub-section is administrative in nature and, therefore, the principles applicable to exercise of judicial or quasi-judicial powers cannot be applied for construing the provision.

In the aforesaid two decisions of the Supreme Court and this Court, however, the question whether an order of reference made by the appropriate Government under Sub-section (1) of Section 10 of the Act can be quashed by the Court where the industrial dispute had become stale did not arise for decision. We may now take note of the decisions in which the Supreme Court has considered the plea of stale industrial dispute for holding an order of reference to be bad.

In Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, , Section 4-K of the U.P. Industrial Disputes Act, 1947, which is similarly worded as Section 10(1) of the Act was the subject matter of interpretation before the Supreme Court. The facts of the case were that the workman was not a member of the Union in the beginning of 1959 when the State Government refused to make a reference u/s 4-K of the U.P. Industrial Disputes Act, 1947 and the workman became a member of the Union in July, 1962 and it was thereafter that the respondent Union revived the dispute which had ceased to be alive after the Government's refusal and it was at the instance of the Union that the Government later on changed its mind and in August, 1963 agreed to make the reference. The contention before the Court was that the Government having once declined to refer the dispute could not change its mind after a lapse of nearly six years after the dispute arose and that though the expression "at any time" in Section 4-K of the U.P. Industrial Disputes Act did not apparently signify any limit, it must be construed to mean that once the Government had refused to make the reference after considering the matter and the employer thereupon had been led to believe that the dispute was not to be agitated in a Tribunal and had consequently made his own arrangement the Government cannot, on a further agitation by the Union, take a somersault and decide to refer it for adjudication. The Supreme Court held that the Legislature

had 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 because the section clearly provides in express terms that an industrial dispute existed or is apprehended so that the Government may decide to refer it to adjudication. The passage in Para 8 of the decision of the Supreme Court as reported in the AIR in which the expression "at any time" in Section 4-K of the U.P. Industrial Disputes Act has been interpreted is quoted herein below:

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

It is thus clear from the above quoted passage that the expression "at any time" was construed by the Supreme Court in the context in which it has been used to postulate that the reference can only be made if an industrial dispute exists or is apprehended and no reference is contemplated where the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence. In the aforesaid decision, the Supreme Court also took note of its earlier authoritative pronouncement in the State of Madras v. C.P. Sarathy (supra), as well as the Division Bench decision of this Court in Rewa Coal Fields Ltd. v. Central Government Industrial Tribunal, Jabalpur (supra), that the function of the appropriate Government u/s 10(1) of the Act is an administrative function. The passage in Paragraph 9 of the judgment in Western India Watch Co. Ltd. v. The Western India Watch Co. Workers Union and Ors. (supra), which is relevant for deciding the issue in the present case is quoted herein below:

...There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier

refusal, led to believe that there would be no reference and acts upon such relief, does not affect the jurisdiction of the Government to make the reference.

It will be clear from the law laid down by the Supreme Court that the mere fact that there has been a lapse of time from the date when the dispute originated does not affect the jurisdiction of the appropriate Government to make the reference but as has been held in the two passages, quoted above, at the time the reference is made, the dispute must exist and if the dispute no longer exists, the reference made by the Government would be beyond its powers u/s 10(1) of the Act. This is because u/s 10(1) of the Act, the appropriate Government can make a reference only if the industrial dispute "exists" or is "apprehended" and not otherwise.

In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.* (supra), cited by Mr. Kale, the facts were that disciplinary proceedings were initiated against a Clerk of the Bank for having misappropriated a sum of Rs. 1185/- and for having falsified the books of the Bank. After the conclusion of the enquiry, he was served with a notice dated 13-10-1972 to show cause why punishment of dismissal from service be not imposed upon him because of grave misconduct which had been proved against him. He admitted his guilt and prayed for mercy. Considering the circumstances of the case, however, he was dismissed from service with effect from 11-8-1972. He filed an appeal to the Board of Directors of the Bank and admitted that he had committed the misappropriation but expressed unconditional regret and prayed that highest penalty of dismissal from service be not imposed on him, but the Board of Directors of the Bank dismissed the appeal by order dated 30-1-1973. When the matter rested at that, after a period of about seven years, he served a notice to the Bank contending that he was discriminated as two other employees of the Bank under similar circumstances were reinstated in the service of the Bank. When the Bank did not reinstate him in service, he filed an application before the State Government u/s 10 of the Act on 24-7-1979 but the State Government rejected the application saying that the appropriate Government was the Central Government and not the State Government. On 31-10-1980, he moved the Assistant Labour Commissioner (Central) for relief, who by his order dated 11-3-1981 held that there was no scope for formal proceedings under the Act since the matter was one which arose way back in 1972. He then filed a writ petition before the High Court and the High Court directed the Assistant Labour Commissioner (Central) to send his report to the Central Government. Pursuant to the order of the High Court, the Assistant Labour Commissioner sent his report to the Central Government for consideration and the Central Government declined to make a reference by order dated 1-1-1983 with the direction to the Central Government to re-examine the matter. The Central Government filed an appeal before the Division Bench of the High Court but the same was dismissed and thereafter, the Central Government made a reference u/s 10(1) of the Act by order dated 24-1-1995. The validity of the reference was challenged and the High Court held that the reference was valid. When the Bank moved the Supreme Court, the Supreme Court held that

the Government cannot in exercise of its powers u/s 10 of the Act revive matters which have since been settled as no industrial dispute existed. Para 6 of the judgment of the Supreme Court in *Nedungadi Bank Ltd. v. K.P. Madhavankully* (supra), as reported in the SCC is quoted herein below:

6. Law does not prescribed 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.

It will be clear from the aforesaid decision of the Supreme Court that the reason why the Supreme Court held that the appropriate Government could not make the reference u/s 10 of the Act was that at the time the reference was made, no industrial dispute existed or could be even said to have been apprehended. Thus, in *Nedungadi Bank Ltd. v. K.P. Madhavankutty* (supra), the Supreme Court reiterated the position of law that existence or apprehension of an industrial dispute is the basis for the appropriate Government to assume the jurisdiction u/s 10(1) of the Act for making a reference. It will be further clear from Para 8 of the judgment in the said case as reported in the SCC that the Supreme Court relied on its earlier observation in *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, , that the High Court has jurisdiction to entertain a writ petition when there is no industrial dispute and none is apprehended which could be the subject matter of reference for adjudication to Industrial Tribunal u/s 10 of the Act.

The aforesaid discussion of the authorities would show that in cases where a belated reference is made of an industrial dispute u/s 10(1) of the Act, the High Court while exercising its powers under Article 226 of the Constitution will examine only whether the industrial dispute which is claimed to be stale still exists or not and in case the industrial dispute still exists, the High Court will not interfere with the order of reference on the ground that the order passed by the appropriate Government is without jurisdiction. But if the stale dispute referred by the appropriate Government u/s 10(1) of the Act for industrial adjudication no longer exists by lapse of time or otherwise, the High Court in exercise of its powers under Article 226 of the Constitution will quash the order of reference on the ground that the appropriate Government did not have the power or jurisdiction to make the reference, inasmuch as u/s 10(1) of the Act, the jurisdiction and power of the appropriate Government is available only when an industrial dispute exists or is apprehended.

Mr. Kale, learned Counsel for the petitioner, however, submitted that the language of Section 12(5) of the Act would show that the appropriate Government must be satisfied that there is a case for reference and only then it can make such a reference. He submitted that where, therefore, a belated claim is made on behalf of any of the parties, the appropriate Government must refuse to make a reference u/s 10(1) read with Sub-section (5) of Section 12 of the Act. In support of this submission, Mr. Kale has relied on the decision of the Supreme

Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, .

We have perused the aforesaid decision of the Supreme Court in *Bombay Union of Journalists and Ors. v. State of Bombay and Anr.* (supra), and we find that in the aforesaid decision, the Supreme Court while relying upon its earlier decision in *State of Bombay Vs. K.P. Krishnan and Others*, , held that if the claim made is patently frivolous or clearly belated, the appropriate Government may refuse to make a reference in exercise of its powers u/s 12(5) of the Act. In *State of Bombay v. K.P. Krishnan* (supra), to which a reference has been made in the decision in the *Bombay Union of Journalists and Ors. v. State of Bombay and Anr.* (supra), cited by Mr. Kale, the facts were that the State of Maharashtra refused to make a reference of an industrial dispute with regard to some service conditions of the workmen on the ground that the workmen resorted to go slow during the year 1952-53 by its order dated 11th December, 1954 and it is this order of the Government of Maharashtra u/s 12(5) of the Act, which was in dispute first before the High Court and thereafter before the Supreme Court and the Supreme Court, after construing the provisions of Sections 10 and 12 of the Act held that the question as to whether a case for reference has been made out within the meaning of Section 12(5) of the Act can be answered in the light of all the relevant circumstances which would have a bearing on the facts of the case as well as on the incidental questions as to whether a reference nevertheless should be made or not. The relevant passage from Para 11 of the judgment of the Supreme Court as reported in the AIR is quoted hereinbelow:

11. ...The problem which the Government has to consider while acting u/s 12(5) (a) is whether there is a case for reference. This expression means that Government must consider whether a prima facie case for reference has been made on the merits. If the Government comes to the conclusion that a prima facie case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts, which would justify its refusal to make a reference. The question as to whether a case for reference has been made out can be answered in the light of all the relevant circumstances which would have a bearing on the merits of the case as well as on the incidental question as to whether a reference should nevertheless be made or not. A discretion to consider all relevant facts which is conferred on the Government by Section 10(1) could be exercised by the Government even in dealing with cases u/s 12(5) provided of course the said discretion is exercised bona fide, its final decision is based on a consideration of relevant facts and circumstances, and the second part of Section 12(5) is complied with.

It will be clear from what has been held by the Supreme Court in *State of Bombay v. K.P. Krishnan and Ors.* (supra), that even if a dispute exists or is apprehended, the appropriate Government in its discretion may consider all relevant facts and circumstances and decide whether or not to make the reference. By way of illustration, the Supreme Court observed in the said case

that it may be open to the appropriate Government to consider the question of expediency to enquire whether the dispute raises a claim which is very stale. Thus, while refusing to make a reference u/s 12(5) of the Act, the appropriate Government may be satisfied that there exists an industrial dispute but may still refuse to make an order of reference on the ground that an industrial dispute raises a claim which is very stale. The circumstances of the industrial dispute being a stale claim may be relevant circumstance, as pointed out by the Supreme Court in the cases of *State of Bombay v. K.P. Krishnan* as well as in *Bombay Union of Journalists and Ors. v. State of Bombay and Anr.* (supra), for the appropriate Government not to make a reference in exercise of its discretion under Sections 10(1) and 12(5) of the Act.

The decision of the Supreme Court in *Haryana State Co-operative Land Development Bank v. Neelam* (supra), cited by Mr. Kale is not a case in which the order of the appropriate Government u/s 10(1) of the Act was challenged on the ground that the reference was competent. In the said case, after the reference, an award has already been made by the Labour Court and the Supreme Court having found that the workman in that case had approached the Labour Court after more than seven years held that this was a relevant factor which the Labour Court took into consideration for refusing to grant relief to the workman and the question of interfering with the award of the Labour Court by the High Court in exercise of discretionary jurisdiction under Article 226 of the Constitution did not arise.

Similarly in *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Limited and Anr.* (supra), cited by Mr. Naman Nagrath, the order of the appropriate Government u/s 10(1) of the Act to make a reference was not under challenge. The reference of an industrial dispute made to the Labour Court and the award passed by the Labour Court granting the relief to the workman was challenged before the High Court under Article 226/227, Constitution of India on the ground that the claim of the workman was belated and the High Court interfered with the award on the ground of delay of seven years. The Supreme Court held that the workman appears to be justified in objecting that the management had not taken the plea and had not led any evidence regarding delay before the Labour Court and the High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution. The Supreme Court, however, observed that the Labour Court ought to have appropriately moulded the relief by denying the workman some part of the back wages considering the delay.

In *Anand Kumar Dubey v. Union of India and Ors.* (supra), the order passed by the appropriate Government u/s 10(1) of the Act making a reference was not challenged and what was challenged was an order passed by the appropriate Government u/s 12(5) of the Act refusing to make a reference of an industrial dispute on the ground that the claim of the workman was belated and the

Division Bench held that since the workman had satisfactorily explained the delay, the appropriate Government should have made the reference as per demand of the workman as per the facts of the case. Following the aforesaid decision of the Division Bench in *Anand Kumar Dubey v. Union of India and Ors.* (supra), a learned Single Judge of this Court in *Ramsewak v. Union of India and Ors.* W.P. No. 3695 of 2000, decided on 29-3-2001 quashed the order passed by the appropriate Government u/s 12(5) of the Act refusing to make the reference on the ground of delay. This is also not a case where the order u/s 10(1) of the Act of the appropriate Government making a reference of an industrial dispute for industrial adjudication was challenged.

On the aforesaid analysis of the provisions of Sections 10(1) and 12(5) of the Act as well as the principles laid down by the Supreme Court in various cases, we are of the considered opinion that a belated claim giving rise to an industrial dispute can be referred by the appropriate Government u/s 10(1) of the Act if the appropriate Government finds that the industrial dispute exists at the time of making the reference notwithstanding the fact that the claim is belated and such an order passed by the appropriate Government u/s 10(1) of the Act cannot be interfered with by the High Court under Article 226 of the Constitution on the ground that the reference is incompetent or without jurisdiction. But at the same time, the appropriate Government while exercising its wide discretion under Sections 10(1) and 12(5) of the Act may refuse to refer an industrial dispute which exists but which has become stale if it is not expedient to refer the same as this would be a relevant circumstance while examining the question whether a case for reference is made out or not for industrial adjudication. These are the conclusions we have arrived at on examining various decisions of the Supreme Court under Sections 10 and 12 of the Act discussed above and we answer the reference accordingly.

Since we have answered the reference which has been made to us, the case will now be placed before the appropriate Bench for hearing on merits.