
(2003) 12 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6832 of 2000

Ganesh Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12

Citation : (2003) 96 FLR 14 : (2004) 2 MPHT 354

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Kamal Singh Rajput, for the Appellant; R.K. Gupta and Rajnish Gupta, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—In this petition, petitioner is aggrieved by an order of refusal to make reference on the ground of delay as per order (P-10) dated 29-8-2000 passed by the Government of India, Ministry of Labour.

2. Petitioner was employed as casual labour in the year 1978 and was brought to the cadre of monthly rated casual labour. He was working in Central Railway. A service card was also issued to the petitioner. In the year 1984, while the petitioner was removed other contemporary gangmen were retained. Petitioner was again re-appointed at Harda. Petitioner fell ill and was admitted in the Railway Hospital, Burhanpur on 17-6-1995. During the period of his illness, petitioner was under treatment in the Railway Hospital, was shown to be absent and an S.F. 5 alleging misconduct of unauthorised absence was served on him. He has not been afforded any opportunity to submit reply to the S.F. 5 and on the assurance that no further action will be taken petitioner's signature on two blank papers were obtained by the P.W.1.(R). Harda. At the same time the S.F. 5 has also been taken back from him. Petitioner is ignorant about English language. He has neither been read over nor explained the contents of S.F. 5 in Hindi, hence, he. could not understand as to what for charge- sheet was given to

him. Another order (P-2) was served on 22-10- 1986. The services of the petitioner were terminated w.e.f. 22-11-1986. Petitioner again fell ill and became fit to resume duty on 26-5-1987 as per certificate (P-3) issued by the Assistant Divisional Medical Officer, Central Railway, Bhusawal. Petitioner submits that the order of removal is illegal and contrary to the Railway Servants (Discipline & Appeal) Rules, 1968. Petitioner preferred an appeal belatedly after the prescribed period of 45 days. As petitioner was fit to resume the duty on 26-5-1987, memo of appeal (P-4), dated 9-6-1987 has been placed on record. Appeal of the petitioner has not been decided. Having failed to get any decision on appeal, petitioner approached the Assistant Labour Commissioner. An application was filed u/s 12 of the Industrial Disputes Act on 30-10-1999. The Assistant Labour Commissioner referred the matter to the Union of India on 22-5-2000. On 29-8-2000, respondent No. 1 passed an order (P-10) and refused to make the reference on the ground that the dispute has been raised after the lapse of 14 years without any valid reasons for the delay. Hence, aggrieved by the order (P-10) this writ petition has been preferred before this Court.

3. A return has been filed by the respondent Nos. 2 to 4. It is contended in the return that no statutory appeal was preferred within the stipulated period and mercy appeal was submitted on 9-6-1987. There is no provision of making mercy appeal. Representation was again submitted on 11-11-1992. As the petitioner did not do anything in the matter and approached the Assistant Labour Commissioner belatedly, there was inordinate delay, as such order passed by respondent No. 1 refusing to make a reference, is proper and no interference is called for in the same.

4. Shri Kamal Singh Rajput, learned Counsel appearing for the petitioner has submitted that the Article 137 is not applicable. In the facts and circumstances of the case, as the petitioner was ailing and had preferred an appeal after recovering from ailment in the year 1987 which was not decided. Petitioner has submitted a representation for decision of the appeal, still the appeal was kept pending. It can not be said that there was inaction on the part of the petitioner for redressal of the grievance. On the contrary, inaction was on the part of the respondent Nos. 2 to 4 in not deciding the appeal. Thus, refusing to make reference of industrial dispute which had arisen amounts to deciding the dispute on merits which could not have been done by the respondent No. 1 and there is no delay in the facts and circumstances of the case so as to refuse to make reference on the ground of delay.

5. Shri R.K. Gupta, learned Sr. Counsel assisted by Shri Rajnish Gupta appearing for respondent Nos. 2 to 4 has supported impugned order and placed reliance on certain decision to show that on the ground of delay there can be a refusal to make reference. Delay disentitles an employee of making an application for referring the dispute for adjudication to the Labour Court and order (P-10) is proper and no interference is called for.

6. First coming to the circumstances of the instant case. It is clear that the

petitioner was ailing at the time of his dismissal. When S.F. 5 was served, he was in the hospital as averred and had recovered only in the year 1987 and on being discharged from the hospital, he had preferred an appeal before the respondents against the order of his dismissal. In the circumstances of the case it can not be said that the petitioner had not preferred an appeal against the order of his dismissal, which was kept pending. Petitioner had filed representation in the year 1992 for decision of pending appeal on merits and failing to obtain the redressal of the grievance had approached the Assistant Labour Commissioner in the year 1999, thus, in the circumstances of the case, it can not be said that there was total inaction on the part of the petitioner in taking steps for the redressal of his grievance, though there was some delay, but, it can not be said to be such so as to justify a refusal to make the reference of the industrial dispute in the facts and circumstances of the instant case.

7. The Apex Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, , has laid down that the employer's plea of delay in seeking reference, unless coupled with proof of real prejudice to him was held to be not sufficient to deny relief to the workman, even in cases of proved delay. Relief can be moulded by declining whole or part of back wages and delay of 7 years in seeking reference was said to be inconsequential and the relief was moulded and the backwages were limited to 60% for the period of delay.

8. A Division Bench of this Court in *Anand Kumar Dubey Vs. Union of India (UOI) and Others*, has relied upon *Ajaib Singh (supra)* and has held as under :--

5. During the course of hearing, Shri M.R. Chandra brought to our notice the decision of the Apex Court *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.*, reported in 1999(4) SLR 109. In this case, the services of the workman were terminated by the management without compliance of the mandatory provisions of the Industrial Disputes Act, 1947. The dispute regarding termination of service was referred to Labour Court by the Government on 19-3-1982. By award dated 16-4-1986, reinstatement of the workman with full back wages was ordered. The management challenged the order before the High Court for quashing the award on the ground that the workman approached the Court for grant of relief after prolonged delay. Accepting the plea, the High Court held that the workman was not entitled to any relief for having slept over the matter for seven years and confronted the management with the claim at a belated stage. Judgment of the learned Single Judge was confirmed by the Division Bench. However, the Apex Court, dealing with the question exhaustively and comprehensively, allowed the claim of the workman and held that no limitation was prescribed for raising the demand by the workman for seeking reference and Article 137 of Limitation Act, 1963 was inapplicable to the application under the Industrial Disputes Act. Plea of delay by the employer is required to be proved as a matter of fact by showing real prejudice by the employer and not by way of hypothetical defence. No reference

can be questioned on the point of delay. This decision has been followed by the High Court of Madras in 1999 Lab IC 3389 (Cheran Transport Employees" Union, Kattor, Coimbatore v. Govt. of Tamil Nadu and Anr.). Learned Single Judge has held that in the absence of any prescribed period in the statute, merely on the ground of delay, it is not open to the Government to reject the reference for adjudication. Further, the claim of the workman can not be rejected as "very stale" or opposed to the provisions of the Act, or inconsistent with any agreement between the parties, or patently frivolous and that it is not open to the Government to refuse reference merely on the ground that domestic enquiry was held fairly and properly and the punishment awarded was appropriate etc."

9. Another Single Bench of this Court in *Indergeer v. Union of India and Ors.* 2003(1) M.P.H.T. 23 has relied on *A.K. Dubey v. Union of India* (supra), the Division Bench decision of this Court. In *Wadson Masiha Vs. Union of India (UOI) and Others*, when the petitioner made representation it was held that the delay was sufficiently explained and Union of India was directed to consider the matter to make reference of the dispute within four months.

10. True it is that merely because the Industrial Disputes Act does not provide for raising of the dispute, it can not be said that the dispute can be allowed to be raised at any point of time as held by the Supreme Court in *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, . The Apex Court has held that 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 workman wholesale. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, the Apex Court has held that the delay in case has not 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 which was re-examined. The Apex Court held that delay was not material circumstance in the case to throw away the dispute on the ground of delay. It has to be seen in the facts and circumstances of the case whether there is any prejudice which is going to be caused to an employer in case dispute is referred for adjudication after delay. In the instant case this is not the plea raised in the return that evidence has been destroyed. There is no finding recorded in the impugned order to that effect. Thus, in my opinion, no prejudice is going to be caused on the ground of delay to the respondent Nos. 2 to 4 after the dispute is referred for adjudication.

11. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, when a dispute was preferred after 7 years it was rejected both on the ground of delay as well as non- existence of an industrial dispute and the circumstances under which the said two employees were dismissed who were said to be similarly situated were not specified. It was held that every dispute raised by workman can not be said to be an industrial dispute.

12. In *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and*

Others, , the Apex Court has laid down that while exercising the power u/s 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government can not delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10. It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. The Apex Court directed the Govt. to make a reference. It is not the case of the respondents that there is no industrial dispute which exists or is apprehended, nor it is the finding recorded in the order (P-10), in the facts and circumstances of the instant case the delay has been explained and ultimately in case dispute is referred relief can always be moulded in the interest of justice. Thus, refusal by the Union of India to make reference of the dispute on the ground of delay is held to be bad. Order (P-10) is quashed. Respondent No. 1 is directed to consider making of the reference in accordance with law and take a decision within three months from today.

13. Writ petition is allowed with the above direction. No costs.