

(2019) 07 JH CK 0142

In the Jharkhand High Court

Case No : Writ Petition (L) No. 3324 Of 2018

Hiralal Chamar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 2(k), 10, 10(2), 12
Industrial Disputes (Central) Rules, 1957 — Rule 3

Citation : (2019) 07 JH CK 0142

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Shiv Lal Das, Madan Prasad, Sanket Khanna, Anmol Deepak, Indrajit Sinha, Shishir Suman

Final Decision : Dismissed

Judgement

The present writ petition has been filed for quashing reference refusal order contained in letter dated 15.02.2017 issued by the appropriate Government, whereby the dispute for protection of wages of the petitioner has been denied to be referred for adjudication on the ground of inordinate delay.

From the pleadings, it appears that the petitioner was initially appointed as Miner Loader, P.R. (piece-rated) on 02.12.1985 having personal no.02785350 as a permanent employee of Bhowra South Colliery under E.J. Area. Thereafter, he was provisionally allowed to work as Mining Sardar, time-rated worker, vide office order dated 09.02.1996, which was subsequently confirmed vide office order dated 31.12.1996/01.01.1997 and he was placed in the pay scale of Mining Sardar.

It further appears that the petitioner was converted from piece-rated worker to time/monthly rated worker as per the service condition of the respondent-Company. There are two types of worker, one is piece-rated and another is time/monthly rated. The wages of piece-rated worker is given on the basis of volume of work while the wages of time-rated worker is given on the basis of time i.e.

daily wages.

The claim has been made by the concerned workman that while shifting from piece-rated to time-rated worker, last wages paid to the workman (petitioner), Special Piece Rated Allowance (S.P.R.A.) at Rs.14.00/- per day was not added in his basic pay and the same has not been taken care of by the respondents while fixing the pay scale when it has been changed to the time-rated worker. Thus, the denial of pay protection has been raised.

Admittedly, shifting has been made from piece-rated to time-rated in the year 1996 while industrial dispute has been raised in the year 2016.

The delay has been explained by the petitioner before this Court taking plea that it is continuing offence as wages are paid each month and since he gets less payment each month it gives fresh cause of action to the petitioner. Further plea has been taken by the petitioner that representation has been made to the authorities against less payment and no action has been taken by the respondents. It is fault on the part of the respondents and as such refusal of reference on the ground of delay is not maintainable.

On the other hand, learned counsel for the respondents has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of Prabhakar v. Sericulture Deptt. reported in (2015) 15 SCC 1.

Paragraphs 28 and 42 of the aforesaid judgment are quoted herein below:

"28. The aforesaid case law depicts the following:

28.1 The law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.

28.2. The words "at any time" used in Section 10 would support that there is no period of limitation in making an order of reference.

28.3. At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.

28.4. Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard-and-fast rule regarding the time for making the order of reference."

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"42. On the basis of the aforesaid discussion, we summarise the legal position as under:

42.1. An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2-A of the

Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that "any industrial dispute exists or is apprehended". The words "industrial dispute exists" are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.

42.2. Dispute or difference arises when one party makes a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary precondition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist.

42.3. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

42.4. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute

by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2 -A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of this demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. 42.5. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an "existing dispute". In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted."

Sections 2(k), 10 and 12 of the Industrial Disputes Act, 1947 are quoted herein below:

"2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

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"10. Reference of dispute 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)"

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"12. Duties of conciliation officers.-(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

[Provided that, (subject to the approval of the conciliation officer,) the time for the submission of the report may be extended by such period as may be agreed

upon in writing by all the parties to the dispute]"

Rule 3 and Form A of the Industrial Disputes (Central) Rules, 1957 are quoted herein below:

"3. Application.-An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court, Tribunal or National Tribunal shall be made in Form A and shall be delivered personally or forwarded by registered post [to the Secretary to the Government of India in the Ministry of Labour and Employment (in triplicate)] the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central), and the Assistant Labour Commissioner (Central) concerned. The application shall be accompanied by a statement setting forth-

- (a) the parties to the dispute;
- (b) the specific matters in dispute;
- (c) the total number of workmen employed in the undertaking affected;
- (d) an estimate of the number of workmen affected or likely to be affected by the dispute; and (e) the efforts made by the parties themselves to adjust the dispute."

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"FORM A

FORM OF APPLICATION FOR THE REFERENCE OF AN INDUSTRIAL DISPUTE TO A BOARD OF CONCILIATION/COURT OF ENQUIRY/LABOUR COURT/ TRIBUNAL/ NATIONAL TRIBUNAL UNDER SECTION 10(2) OF THE INDUSTRIAL DISPUTES ACT, 1947

Whereas an industrial dispute **is apprehended/exists between and and it is expedient that the matters specified in the enclosed statement which are connected with or relevant to the dispute should be referred for **enquiry/ adjudication by a Board of conciliation/a court of Enquiry/a Labour Court/a Tribunal/a National Tribunal, an application is hereby made under sub-section (2) of section 10 of the Industrial Disputes Act, 1947, that the **said matters/said dispute should be referred to a **Board of conciliation/a court of Enquiry/a Labour Court/a Tribunal/a National Tribunal.

This application is made by the undersigned who have/has been duly authorised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the held on the 20

A statement giving the particulars required under rule 3 of the Industrial Disputes (Central) Rules, 1957, is attached.

Dated the

Signature of employer **

or agent

or manager

or principal officer of the Corporation

Signature of the President of the trade union**

Secretary of the trade union.....

or

**Signature of five representatives duly authorised (vide resolution enclosed)

[or

"Signature of the workman.....

or

**Signature of the workman in the same establishment duly authorised (vide authorization enclosed).....]

To

The Secretary to the Government of India,

Ministry of Labour.

Statement required under rule 3 of the Industrial Disputes (Central) Rules, 1957, to accompany the form of application prescribed under sub-section (2) of section 10 of the Industrial Disputes Act, 1947:

(a) Parties to the dispute including the name and address of the establishment or undertaking involved;

(b) Specific matters in dispute;

(c) Total number of workmen employed in the undertaking affected;

(d) Estimated number of workmen affected or likely to be affected by the dispute;

(e) Efforts made by the parties themselves to adjust the dispute. [Copy to-

(i) The Assistant Labour Commissioner (Central)[here enter office address of the Assistant Labour Commissioner (Central) in the local area concerned];

(ii) The Regional Labour Commissioner (Central);

(iii) The Chief Labour Commissioner (Central), New Delhi.] ** Delete whichever is not applicable."

On the strength of above judicial pronouncement and relevant provision, it has been submitted by the counsel for the respondents that industrial dispute is to be raised by the applicant to the concerned authority under Form-A prescribed under the Central Rules (supra). The plea has been taken in the present case that application has been made in the year 2016 while cause of action has been arisen in the year 1996. Thus, there is delay of 20 years. It is well settled principle of law that once the service condition has been accepted by the employee and no industrial dispute has been raised in accordance with law for a long period (in the present case it is 20 years), then it is presumed that the employee concerned has accepted the service condition. It is also well settled principle of law that Industrial Disputes Act has been enacted for resolving the dispute and maintaining peace in the industries. If the stale claims are allowed, then it will be against the spirit of the Industrial Disputes Act and also against the economic interest of the nation. The thing which has been settled by passage of time, cannot be reopened. The existing or live dispute is sine qua non for reference.

Heard counsel for the parties.

From the discussions made above, it is evident that in the present case the dispute has come into existence in the year 1996 when the concerned employee was shifted from piece-rated category to time-rated category. As per the employee, representation has been made, but, it is admitted position that dispute has been raised for the first time in the year 2016 when proper application has been made under Form-A as per the Central Rules (supra) to the authorised officer. In the present case, such application has been made in the year 2016 while the cause of action is of the year 1996. So far representation to the authority is concerned, that has not evoked any response from authority, still, workman has not raised the dispute in accordance with law.

Another plea of the petitioner is that it is continuing cause of action as he is getting less wages in each month and as such every month's gives fresh cause of action to the petitioner. In the present case, the bone of contention is not giving pay protection while shifting his service from the category of piece-rated to time-rated in the year 1996. Getting less payment is consequence not the cause of action. Thus, the plea raised by the petitioner is not maintainable.

It is also well settled principle of law, in view of the judicial pronouncement (supra), that while referring dispute for adjudication it is duty of the Central Government that stale claim is not allowed, otherwise it is contrary to the spirit of the Industrial Disputes Act and such act will not promote peace rather disharmony.

In view of the above discussions, this Court finds that the Central Government has rightly refused the reference. Resultantly, this writ petition is hereby dismissed.