

(2005) 11 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No. 256 (M/S) of 2005

Hukum Singh @ Hukum Chand

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Limitation Act, 1963 — Article 137

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5), 2A, 37C

Citation : (2006) 3 UC 1503

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Pankaj Miglani, for the Appellant; R.C. Arya, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—By means of this writ petition, the Petitioner has prayed for writ of Certiorari quashing the impugned order dated 11-03-2005, passed by Respondent No. 3 contained as Annexure No. 3 to the writ petition.

2. Brief facts of the case giving rise to this writ petition are that the Petitioner was working as Beldar on muster roll since 03-01-1992 till 31-12-1992 regularly. On 01-01-1993, he was denied from doing any work and his service was illegally retrenched without following the provisions of Section 6-N of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act). On 06-12-2004, the Petitioner made an application to the Conciliation Officer u/s 2-A of the Act along with the application for condonation of delay and the case was registered as C.P./C.D. Case No. 64 of 2004. The Conciliation Officer on receipt of the application issued notices to both the parties to file the objections/written statements. Respondent No. 4 filed its objection stating therein that the Petitioner has worked with the employer i.e. Respondent No. 4 for some time as the Model Study was to be completed for a canal that was financed by the World Bank, within stipulated time, after doing the work for some time the Petitioner/workman has stopped coming to the work on his own and matter is barred by delay.

Thereafter, the Respondent No. 3 after hearing both the parties passed the impugned order and rejected the application of the Petitioner on the ground of delay. Feeling aggrieved, the Petitioner has come up in the writ petition.

3. I have heard learned Counsel for the parties and perused the entire evidence on record.

4. The question of delay in raising the dispute has to be adjudicated by the Labour Court and not by the Conciliation Officer. Apart from this, the matter of delay does not bar the jurisdiction of Labour Court and provisions of Article 137 of the Indian Limitation Act are not applicable in cases of Industrial Disputes Act as there is no specific time provided in the Act for raising the dispute. Therefore, the impugned order cannot be sustained in the eye of law.

5. The Apex Court in the case *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, held that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay is raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or board, dealing with the case, can appropriately mould the relief by declining to grant back wages to the workman till the date, he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.

6. 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. The Apex Court has observed as under:

It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned Counsel for the Respondent-management on the full bench judgment of the Punjab and Haryana High Court in *Ram Chander Morya v. State of Haryana*, is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the

Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunal will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay". We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application u/s 37-C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal view of the Judges presiding the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunals under the Act.

7. This analogy has further been observed in the case of Gurmail Singh Vs. Principal, Govt. College of Education and Others, . The Apex Court has observed as under:

...As laid down by this Court in the case of Hira Vs. Kasturibai and Others, , if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back wages for the period of delay in raising such a dispute if on merits it is to succeed.

8. The observations of the Apex Court in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, are fully applicable. The same is quoted below:

Applying the principle laid down by this Court in the above decisions, there can be no doubt that the government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the government in exercise of its administrative function u/s 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, , there may be exceptional cases in which the State Government may, on a proper examination of the demand with a view to declining reference and courts will always be vigilant whenever the government attempts to usurp the powers of the Tribunal for adjudication of valid disputes and that to allow the government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

9. In Sharad Kumar Vs. Govt. of NCT of Delhi and Others, , the Apex Court has observed that the appropriate Government is precluded from considering even

prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5) of the Act. In *Sharad Kumar v. Govt. of NCT of Delhi and Ors.* (supra), the Hon"ble Supreme Court has relied upon the judgment in *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, as well as *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, and has held as under:

24. In *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, taking note of the decision in the case of *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , wherein it was held that appropriate government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5), or not, this Court held that the Court had made it clear in the same judgment that it was a province of the industrial tribunal to decide the disputed questions of facts. This Court made the following observations:

5...Therefore, while conceding a very limited jurisdiction to the state government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the tribunal to decide. Section 10 permits appropriate government to determine whether dispute "exists or is apprehended" and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication. When a reference is rejected on the specious plea that the government cannot bear the additional burden, it constitutes adjudication and thereby usurption of the power of a quasi judicial tribunal by an administrative authority namely, the appropriate government. In our opinion, the reasons given by the state government to decline reference are beyond the powers of the government under the relevant sections of the Industrial Disputes Act. What the state government has done in this case is not a prima facie examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the central government would cost additional financial burden on the government is to make a unilateral decision without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterized as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the tribunal and to substantiate the reasonableness of the demand.

10. I am fortified in my view by the verdict of Hon"ble Apex Court in the case of *Sapan Kumar Pandit v. U.P. State Electricity Board and Ors.* reported in 2001 SC-SLR 658, in which the Hon"ble Apex Court has held as under:

It is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provision i.e. Section 4-K of the U.P. Act. In *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and*

Others, , learned Judges made the following observations:

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 adjourned 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.

11. In view of the aforesaid observations of the Hon'ble Apex Court, the impugned order passed by the Assistant Labour Commissioner cannot be sustained in the eye of law. The Assistant Labour Commissioner is directed to refer the matter for adjudication before the Labour Court or Industrial Tribunal, as the case may be.

12. The petition is allowed accordingly. No order as to costs.