
(2012) 02 AHC CK 0091
In the Allahabad High Court
Case No : Special Appeal No. 1180 of 2008

Manoj Kumar Sahu

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2012) 4 ADJ 555 : (2012) 3 AWC 2450 : (2012) 133 FLR 23

Hon'ble Judges : Rakesh Tiwari, J; Dinesh Gupta, J

Bench : Division Bench

Advocate : Pranav Ojha, for the Appellant; K.L. Grover, Ramesh Singh, Raj Kumari Devi and I.S. Tomar, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari and Dinesh Gupta, JJ.—Heard Sri Pranav Ojha, learned Counsel for the appellant, Sri I.S. Tomar, Advocate holding brief of Smt. Raj Kumari Devi, learned Counsel appearing for the Union of India, respondent Nos. 1 and 2, Sri K.L. Grover, Advocate assisted by Sri Ramesh Singh, learned Counsel for respondent Nos. 3 and 4, learned Standing Counsel on behalf of respondent Nos. 5 and 6 and perused the record. This special appeal is preferred against the judgment and order dated 25.7.2008 passed by the learned Single Judge in Civil Misc. Writ Petition No. 32844 of 2003, Manoj Kumar Sahu v. Union of India and others whereby the aforesaid writ petition had been dismissed.

2. The judgment and order impugned is assailed on the ground that the learned Single Judge has misdirected himself in construing section 2(s) of the Industrial Disputes Act, 1947 and that section 10 of the Industrial Disputes Act, 1947 does not prescribe any time limit for making a reference.

3. It is lastly urged that the learned Single Judge has wrongly relied upon the judgment rendered in Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, wherein the Apex Court has held that the dispute

could even be referred at any time. The judgment rendered in Shalimar Works Limited Vs. Their Workmen, has also been relied upon.

Relying upon the aforesaid judgments, learned Single Judge has held that-

There has to be a reasonable period when a dispute could be referred for adjudication. The provisions of section 10 of the Industrial Disputes Act means that an industrial dispute could be referred at any time or at any stage provided such industrial dispute exists. The words "exists" or "is apprehended" in section 10 has to be read along with the words "at any time". If the dispute does not exist nor is apprehended, the question of referring a dispute would not arise.

In the present case, the Central Government has given a categorical finding that no valid explanation has been given for condoning the delay. It is necessarily means that there existed no industrial dispute and that the Central Government was satisfied that on account of long lapse of time, no industrial dispute existed and therefore, declined to refer the dispute. The Court is of the opinion that the order of the Central Government declining to refer the dispute does not suffer from any error of law.

The writ petition is dismissed.

4. We have perused the order dated 18.6.2002 passed by the Under Secretary, Union of India, Ministry of Labour, New Delhi by which he has refused to refer the dispute as according to him industrial dispute did exist as the disputant failed to establish existence of a valid dispute to the effect that he was engaged by the bank during the period from 18.4.1993 to 19.11.1994 on continuous basis and that his services were terminated/discontinued thereafter and further that the dispute has been raised belatedly without giving any reasonable explanation for the delay. The order refusing to refer the dispute reads thus:-

The disputant failed to establish existence of a valid dispute to the effect that he was engaged by the bank during the period from 18.4.1993 to 19.11.1994 on continuous basis and that his services were terminated/discontinued thereafter, further, the present dispute has been raised belatedly without giving any reasonable explanation for the delay.

5. From perusal of the order passed by the under Secretary, Union of India, Ministry of Labour, New Delhi, it is apparent that the Central Government was of the opinion that the workman had failed to establish existence of a valid dispute to the effect that he was engaged by the bank during the period w.e.f. 18.4.1993 to 19.11.1994.

6. Section 10 of the Industrial Disputes Act, 1947 pertains to reference of disputes to Boards, Courts or Tribunals and provides 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 refer the dispute to the appropriate Board, Court or Labour Court or Industrial Tribunal.

7. It is settled law that the Central Government is not empowered to adjudicate upon the matter for the purpose of referring the dispute. It is for the workman to establish that he was employed by the bank during the period w.e.f. 18.4.1993 to 19.11.1994 and that a valid dispute existed or was apprehended. It is also apparent that the Central Government did not refer the dispute considering as to whether any dispute was apprehended or existed. The validity of dispute cannot be determined by him as it is a matter of adjudication.

8. As regards question of limitation is concerned, it is for the Labour Court to grant relief or not to grant relief taking into consideration the question of delay. The Industrial Disputes Act is a welfare legislation for settlement of industrial dispute between an employer and the employee. Even an apprehended dispute can be referred what to say of an existing dispute. In our considered opinion, suffice it to say that as the Central Government has refused to refer the dispute by adjudicating upon the matter itself it has stepped into the shoes of the Labour Court, or the Industrial Tribunal or the appropriate Board, we quash the impugned order dated 18.6.2002 as well as the judgment and order dated 25.7.2008 passed by the learned Single Judge in Civil Misc. Writ Petition No. 32844 of 2003, Manoj Kumar Sahu v. Union of India and others. Since the matter has been lingering on since 1994 before the Regional Conciliation Officer and before the Court in writ petition as well as in special appeal, we deem it expedient in the interest of justice to direct the authority concerned to refer the dispute to the appropriate Labour Court or the Industrial Tribunal-cum-Central Government within a period of one month from today.

For the reasons stated above, the writ petition is allowed. No order as to costs.