
(2002) 11 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2784 of 1998

Narendra Singh Thakur

APPELLANT

Vs

The Divisional Railway Manager, Central Railway, Jabalpur
and Another

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 137

Citation : (2004) 1 MPJR 114

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : H.R. Bharti, for the Appellant; S.P. Sinha, Advocate and Mr. S.K. Yadav, Advocate Amicus curiae, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India the Petitioner has approached this Court for issue or (of) a writ of certiorari for quashment of order dated 18.12.1997, Annexure-P/6, passed by the Central Government in exercise of power conferred on it under the provision of Sub-section (sic) of power conferred on it under Sub-section (sic) brevity ("the Act") whereby the Central Government has declined to refer the dispute in question to the Industrial Tribunal on the ground that the same had been raised belatedly without justifiable reasons and the workman had not put in 240 days service in twelve calendar months.

It is noteworthy to mention here that various assertions have been made to assail the order passed by the Central Government.

A return has been filed by necessary Respondents contending, inter alia, that the order passed by the competent government refusing to refer the dispute to the

Industrial Tribunal was beyond reproach and did not warrant axing by this Court.

The learned Counsel for the Petitioner before the learned Single Judge placed reliance on the decision rendered in the case of Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, putting forth the contention that the appropriate Government could not have adjudicated the matter on merits and the order passed by the said Government related to the realm of merits. Reliance was also placed on the decision rendered in the case of Upendra Sharma v. Union of India and two others (W.P. No. 3913/98). In oppugnation the learned Counsel for the Respondents placed reliance on the decision rendered in the case of Bombay Union of Journalists and Others Vs. The State of Bombay and Another, to bolster his contention that if the claim putforth by a person is patently frivolous or is clearly belated, the appropriate Government has the authority to refuse to make a reference.

The learned Singh Judge referred to the decisions rendered in the cases of State of Bombay Vs. K.P. Krishnan and Others, ; Ram Avtar v. State of Haryana, AIR 1985 SC 695 and Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, and on that basis he was of the view that the law laid down in the case of Upendra Sharma (supra) required reconsideration in view of the law laid down by the Apex Court in the case of K.P. Krishnan (supra). Being of this view S.K. Kulshrestha, J. recommended that the matter should be placed before a Division Bench for reconsideration of the question whether or not the appropriate Government has the power to refuse to make reference u/s 12 (5) read with Section 10(1) of the Act on the ground that claim made is belated or is, on admitted facts, untenable. In this factual backdrop the matter has been placed before us.

Before we proceed to deal with the two issues which are under reference, it is appropriate to refer to certain decisions governing the field so that the cyclorama in entirety is clear. In the case of Bombay Union of Journalists (supra) three Judge Bench of the Apex Court in paragraph 6 held as under:

..... It is true that if the dispute in question raises questions of law; the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea 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 S. 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held

that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Govt, is entitled to make in dealing with a dispute u/s 10(1). and so. the argument that the appropriate Govt, exceeded its jurisdiction in expressing its prima facie on the nature of the termination of services of Appellants 2 and 3, cannot be accepted.

In the case of K.P. Krishnan and Ors. (supra) the Constitution Bench of the Apex Court held as under:

Whether, S. 12(5) is construed as making it obligatory on the Govt. to make a reference when it is satisfied that there is a case for reference or as only conferring a discretion if in refusing to make a reference Govt. is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a court of law. Though considerations of expediency cannot be excluded when Govt. considers whether or not it should exercise its power to make a reference it would not be open to the Govt. to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency. Even in dealing with the question as to whether it would be expedient or not to make the reference Govt. must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. If the work done by the employees prima facie justified, their claim for classification and if the claim was in consonance with the practice prevailing in other comparable concerns the misconduct of the employees cannot be used as a relevant circumstance in refusing to refer the dispute about classification to industrial adjudication. Any consideration of discipline cannot be legitimately allowed to impose such a punishment on the employees. Similarly, even in regard to a claim for bonus, if the employees are able to show that the profits earned by the employer during the relevant year compared to the profits earned during the preceding years justified their demand for additional bonus, it would plainly be a punitive action to refuse to refer such a dispute solely on the ground of their misconduct. If the court is satisfied that the reasons given by the Govt. for refusing to make a reference u/s 12(5) or extraneous and not germane then the court can issue, and would be justified in issuing, a writ of mandamus even in respect of such an administrative order. Hence in such a case issue of writ of madamus against the Government to reconsider the question of making or refusing to make a reference u/s 12(5) ignoring the fact of misconduct of the employees and considering only such reasons as mere germane to the question of determining whether a reference should or should not be made is justified.

(quoted from the placitum)

In the case of Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, a three judge Bench of the Apex Court in paragraph 8 held as under:

From the words used in Section 4-K of the Act there can be no doubt that the

legislature has 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 for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for adjudication. No reference thus can be made unless at the time when the Government decides to make it an industrial dispute between the employer and his employees either exists or is apprehended. 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 take 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 apposite to mention here that in the aforesaid decision their Lordships interpreted the term "at any time" and the context in which it was used. The postulate was clarified to the extent that a reference can only be made if an industrial dispute exists or is apprehended. Their Lordships further went to hold that no reference is contemplated by the section when the dispute is not an industrial dispute or even if it so, if no longer exists or is not apprehended. While so expressing their Lordships gave the illustration where the dispute having been 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 this context it is also profitable to refer to two Judge Bench decision of the Apex Court rendered in the case of Telco Convoy Drivers Mazdoor Sangh (supra) wherein their Lordships held as under:

It is, however submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in Section 2(k) of the Act. It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the Government is whether the persons who are raising the disputes are workmen or not within the meaning of the definition as contained in Section 2(k) of the Act.

Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power u/s 10(1) of the Act, 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 cannot 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 of the Act, See Ram Avtar Sharma and Others Vs. State of Haryana and Another, ., M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, ; Shambu Nath Goyal Vs. Bank of Baroda, .

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 Kararnchari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an 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 the 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.

Presently, we may refer to the recent decision rendered in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, wherein their Lordships after referring to the decision rendered in the cases of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., ; Sakuru Vs. Tanaji, and Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another, in paragraph 10 came to hold 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 can be generally questioned on the ground of delay alone, 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*, (1999) 1 SCT 141 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 tribunals 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 views 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 tribunal under the Act.

After overruling the Full Bench decision of the Punjab and Haryana High Court rendered in the case of *Ram Chander Morya v. State of Haryana*, (1999) 1 SCT 141 their Lordships in paragraph 11 expressed the view as under:

In the instant case, the Respondent-management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances, preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were therefore, unjustified. The High Court was also not justified in holding that the Courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just between equals, "the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result

in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. 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.

In the case of *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, in paragraph 6 the Apex Court ruled thus:

Law does not prescribe 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. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the Respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the Respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the Respondent for raising industrial dispute was *ex facie* bad and incompetent.

Yet in another decision rendered in the case *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, in paragraphs 8 and 9 the Apex Court expressed the view as under:

The appropriate Government would be justified in making a reference u/s 10 of the Act. if it is satisfied on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and "industrial dispute" as per Clause (k) of Section 2 of the Act means, inter alia a dispute or difference between employers and employee, or between employers and workmen. Clause (s) of Section 2 of the Act defines "workman" but does not include any such person -

(i) and (ii)

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him,

functions mainly of a managerial nature.

Before making a reference u/s 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

At this juncture, we think it proper to refer to a two Judge Bench decision of the Apex Court rendered in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, wherein paragraphs 8, 9 and 10 their Lordships have expressed the view as under:

The above section is almost in tune with Section 10 of the Industrial disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindled by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It therefore, means that if the dispute existed on the day when the reference was made by the Government it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication ? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute.

In considering the factual position whether the dispute did exist on the date of reference the Government could take into account factors, inter alia, such as the

subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. It is an admitted fact that on the date of reference in this case the conciliation proceedings were not concluded. If so, it cannot be said that the dispute did not exist on that day.

Thereafter their Lordships referred to the case of Nudungadi Bank Ltd. (supra) and proceeded to state in paragraphs 14 and 15 as under:

It is useful to refer to a three-Judge 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 (para):

"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 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 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.

There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication u/s 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs, that is a different matter altogether. The High court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination.

Mr. H.R. Bharti, learned Counsel for the Petitioner has drawn our attention to the

Division Bench decision of this Court rendered in the case of Anand Kumar Dubey Vs. Union of India (UOI) and Others, .

In this context we have also been commended to the decision cited by Mr. Yadav, learned Amicus Curiae rendered in the case of Ramadhar Tiwari v. Union of India and others. 2002(2) MPHT 217.

We have referred to the aforesaid decisions as we have thought that law has travelled quite a long way without creating any maze. With the passage of time it has been explained, clarified and reiterated in a different manner. What has been stated in the case of Ajaib Singh (supra) that when no limitation has been provided under the Act the Court cannot provide limitation and the same cannot be provided by a Court of law as that would tantamount to an act of legislation by the Court which is not permissible. In that case the award of the Labour Court was set aside on the ground of delay and the Apex Court found that there are justified reasons to state that Labour Court can mould the relief. In the case of Sapan Kumar Pandit (supra) the Apex Court referred to the decision rendered in the case of Western India Watch Co. Ltd. (supra) and expressed the view that there may be cases in which lapse of time has caused fading or even eclipse of the dispute. Their Lordships have also stated that if no body has kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. While so stating their Lordships have reiterated the principle that when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. Thus, their Lordships have laid immense emphasis on the existence of that dispute and it is melting away or waning away by efflux of time without justified reasons. It is apropos to state here in the said case the State Government had made a reference after a lapse of one and a half decade which is quite considerable period of time but their Lordships held as dispute did exist reference was appropriately done and in that backdrop the judgment passed by the High Court was set aside. In the case of Ramadhar Tiwari (supra) the Division Bench in an LPA was dealing with an order passed by the competent authority which was affirmed by the learned Single Judge. The appropriate Government had declined to refer the dispute by stating that the dispute had been raised after a lapse of five years without justifying the reason for the long delay. The Division Bench speaking through the learned Chief Justice took note of the decision rendered in the cases of Mahavir Singh Vs. U.P. State Electricity Board and Others, and Nedungadi Bank Ltd. (supra) and on that basis in paragraph 5 held as under:

In The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , Apex Court held that power of reference should be exercised reasonably and in a rational manner and not in a mechanical fashion. There may be absence of statutory limitation period, but power of making reference cannot be exercised to revive settled matters or stale disputes. When a dispute becomes stale, it would depend on the facts and circumstances of each case. The claim before the Court was

raised after 7 and half years. Disciplinary proceedings were duly conducted against the Appellant on charges of misappropriation of certain amount and falsification of reports. The proceedings ended in dismissal from service. The order was subsequently upheld by the appellate authority. The Appellant got whatever benefits were due to him under the rules. Thus the matter stood settled; still he raised a dispute by serving notice on the bank demand reinstatement on the ground that few other employees of the bank under similar situation were reinstated. In the facts and circumstances of the case, it was held that after complete settlement of the claim, raising a dispute after 7 1/2 years was not competent. This decision lays down that there is no limitation for raising a dispute under any statute, but power of reference should not be exercised for reviving settled matters or stale disputes. Whether a dispute is stale or a settled matter depends on the facts and circumstances of each case.

Thereafter the Division Bench took stock of the fact situation and in paragraph 7 came to hold as under

Appellant was sweeper with the Respondents. He fell ill and was admitted in the hospital. On recovery, he reported for duty, but was told that he was no longer in service. This happened on 23.8.1993, He protested, but to no effect. Consequently, he raised the dispute on 9.12.1987. Conciliation proceedings met with failure. The termination did not cease to exist, therefore dispute continued. At the most, it can be said that he raised it in about 4 years and 4 months. Therefore, rejection order that the dispute has been raised after lapse of more than 5 years is not justified. Appellant has been terminated from service; he is a workman; he has justification to challenge the termination and there is no delay in raising the same as found. In this case, Petitioners raised disputes within 5 years, though in cases brought to our notice, delay has been for more than six years. Consequently, order of learned Single Judge dated 9.7.1999 is liable to be set aside.

In view of the aforesaid enunciation of law the order passed in the case of Upendra Sharma (supra) and other orders which have been referred to in the judgment delivered by the learned Single Judge require to be scrutinised. In the case of Upendra Sharma (supra) the learned Single Judge after referring to the order of rejection passed by the appropriate Government expressed the view as under:

It is now firmly settled that the Authority competent to refer cannot reject the reference on the ground of delay, although it may be a good ground to grant or refuse relief by the Industrial Tribunal or Labour Court to whom the reference is made for adjudication.

In the case of Raj Kapur Sahu v. The Divisional Railway Manager and Anr. (W.P. No. 2753/98) the learned Single Judge held as under:

It has been settled by series of decision by this Court that the Central Government cannot refuse to refer an industrial dispute, if it exists, only on the

ground of delay. The delay may be good ground for the Tribunal to whom the dispute is referred for adjudication to grant or refuse partial relief to the workman.

In the case of *Sudesh Kumar v. Principal Secretary and another* (W.P. No. 3913/97) the learned Single Judge followed to the decision rendered in the case of *Upendra Sharma* (supra).

In the case of *Wardson Masiha v. Union of India and others* (W.P. No. 1400/98) we may state that the order had been passed on 23.11.2001. In the said case the learned Single Judge referred to the decisions rendered in the cases *Ajaib Singh* (supra) and *Anand Dubey* (supra) and expressed the view that when the delay is not culpable and unjustified and an explanation is given then the matter cannot be refused to be referred on the ground of delay.

Considering the law that has come to govern the field, we are disposed to think the first part of the reference requires to be answered in the following terms:

(i) No limitation having been provided on the statute book, the concept of limitation cannot be read into or provided for either by the executive or by the court.

(ii) The delayed or belated approach cannot be the sole or exclusive factor for entitling or enabling the appropriate Government to refuse a reference.

(iii) If the dispute is existing in some form or the other and it has not been galvanized or accentuated for some justified reasons the delay alone would not be fatal or a killing factor enabling the appropriate Government to refuse a reference to curb or scuttle the rights of a person seeking reference.

(iv) Efflux of considerable length of time, may be a criterion to deduce or infer that dispute has ceased to exist but inference in regard to extinction would depend on the fact of each case and should not be readily or routinely arrived at.

(v) If the appropriate Government refuses to refer on the ground of belated approach it must ascribe cogent and germane reasons as to how the dispute has ceased to exist or has waned or faded away as per the law laid down by the Apex Court.

As far as second limb of reference is concerned, the hub of the matter is whether the appropriate Government has the jurisdiction to refuse a reference on the ground that the dispute raised, on admitted facts is untenable. In this context as we have already referred to the decision of the Apex Court rendered in the case of *Telco Convoy Drivers Mazdoor Sangh* (supra) wherein the Apex Court has also made the distinction between the existence of industrial dispute and adjudication of dispute itself on its merits. In the aforesaid case their Lordships held that the court should always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the 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. Thus in answering this limb of the reference we may state that the appropriate Government cannot take resort to colourable exercise of power by stating that no industrial dispute exists though actually it would be adjudicating the merits of the case.

We may hasten to add that this aspect cannot be stated in a precise or a categorical manner and in fact, as every order passed by the appropriate Government has to be scrutinised and the Government cannot be allowed to pass an order in a mechanical manner. The Government may have the power to refuse on admitted facts but the admitted facts must clearly exposit that no industrial dispute exists and this aspect would depend on the facts of each case. Thus, we answer the reference in the above terms.

In view of the aforesaid answer the decisions rendered in the case of Upendra Sharma (supra), Raj Kapoor (supra) and Sudesh Kumar (supra) do not lay down the law correctly. As far as the case of Wardson Masiha (supra) is concerned, though ordinarily we would have stated that it does not lay down the law correctly but the learned Single Judge has ascribed adequate reasons from which it is inferable that the dispute did exist and, therefore, we think it appropriate not to say anything about the same. However, we clarify, any other decision which runs counter to this judgment would deem to have laid down the law incorrectly.

Before we part with the case we must state with all the humility at our command that we express our unreserved and uninhibited appreciation for Mr. S.K. Yadav, learned Counsel who has rendered assistance to us after being appointed as the *amicus curiae*.

Let the matter be placed before the learned Single Judge for appropriate adjudication.