
(2005) 03 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 2472 of 2001

Paresh Labhshanker Joshi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-03-2005

Acts Referred:

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

Citation : (2005) 03 GUJ CK 0040

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : P.H. Pathak, for the Appellant; Samir J. Dave and U.M. Shastri, for the Respondent

Final Decision : Allowed

Judgement

Sharad D. Dave, J.—By way of filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dtd.14/1/1999 passed by the Conciliation Officer of the respondent No.1 - Union of India denying to make Industrial Reference on the ground that the dispute has been raised almost after 15 years without giving any cogent reason for raising the same so belatedly and hence no Industrial Dispute subsists.

2. As per the say of the petitioner, the petitioner was working as Khalasi with the respondent No.2 in Railway since 1981 and after about 1.1/2 years his service was orally terminated. After termination of the service of the petitioner, in 1987, the Hon'ble Supreme Court decided the issue of termination of services of the labourers who put longer services and pursuant to the judgment of the Apex Court, the Railway Board issued a Circular to all the Divisional Heads. The petitioner came to know that juniors to the petitioners have been employed by the respondent without reinstating the petitioner and therefore, he made representations to the concerned authority. Though all the representations of the petitioner received by the Union, no action was taken and therefore, the

petitioner had preferred an Original Application NO.751 of 1995 before the Central Administrative Tribunal, which was initially admitted, but ultimately taken a view that the CAT has no jurisdiction to entertain the cases where provisions of ID Act are involved and accordingly the CAT disposed of the Original Application directing the petitioner to continue with the conciliation proceeding before the conciliation officer. Therefore, the petitioner raised a demand under the provisions of the ID Act on 16/9/1997 through the union. The conciliation officer submitted failure report on the ground of inordinate delay as aforesaid.

3. The learned counsel for the petitioner has mainly argued that the respondent No.1 has no authority to decide and adjudicate the dispute and the dispute cannot be rejected on the ground of delay as per the settled law and hence the impugned order is without jurisdiction. The dispute is required to be referred for adjudication.

4. Learned counsel for the petitioner has further argued that the Government has no jurisdiction to pass order refusing to make Reference on the ground of delay. It is the Competent authority has to only find out that whether any dispute existed, which would be termed as industrial dispute and if he found that the dispute exist, it was incumbent upon him to refer the matter to the Industrial tribunal for adjudication.

5. Learned counsel for the petitioner has further argued that the Government acted beyond the jurisdiction by declining to make reference regarding the dispute raised by the petitioner. He has further argued that it is well settled law by now that on the ground of delay, Reference cannot be denied to the workman. He has also placed reliance on several decision in this connection, which will be referred to in the due course of the judgment.

6. Mr. Samir Dave, learned Additional Standing counsel for the respondent No.1 and Mr. UM Shastri, learned counsel for the respondent No.2 have argued that different view has been taken by the Court on the controversy involved in this petition and hence appropriate order may be passed.

7. Having heard the learned counsel for the respective parties, considering the material on record and in the facts and circumstances of the case, it is clear that the petitioner initially made representations, that the service of the petitioner was terminated and thereafter as the petitioner came to know that his juniors have been reinstated, the petitioner initially made representations concerned authority pursuant to the judgment of the Supreme Court, but as the same were not taken care of, the petitioner preferred Original Application before the Central Administrative Tribunal, which was initially admitted, but ultimately the CAT disposed of the Original Application holding that the Tribunal has no jurisdiction. The Tribunal also directed that the petitioner to continue with the conciliation proceedings before the conciliation officer. Therefore, the petitioner raised a demand under the provisions of the ID Act on 16/9/1997 through the union. The conciliation officer submitted failure report on the ground of inordinate delay as

aforesaid.

8. The Apex Court in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, has held that the provisions of Article 137 of the Schedule to the Limitation Act are not applicable to the Industrial Disputes Act and the relief cannot be denied to the workman merely on the ground of delay. Similar view has been taken by the Apex Court in the case of Sapan Kumar Pandit v. U.P. State electricity Board and Ors., reported in 2001 3 C.L.R. 16.

9. In view of the aforesaid, and in view of the decisions which have been cited by Mr. P.H. Pathak, learned counsel for the petitioner, this petition deserves to be allowed and the same is accordingly allowed. The impugned order dtd.14/1/1999 (Annexure-C) is quashed and set aside. Rule is made absolute with no order as to costs. The State Government is directed to make Reference of the dispute raised by the petitioner to an appropriate Industrial Tribunal within a period of THREE MONTHS from the date of receipt of writ of this order.