
(2007) 01 RAJ CK 0020
In the Rajasthan High Court

Parsa Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2007) 113 FLR 996 : (2007) 2 RLW 1696

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—Aggrieved by the order Annex.3 dated 10.3.2004 passed by Govt. of India, Ministry of Labour, holding therein that the dispute was discontinued from the services by the Management during the year 1986 and the dispute has been raised belatedly after a gap of 16 years without any valid reasons for the delay, hence the dispute has, prima facie, no merit, the petitioner has filed the instant writ petition under Article 226 of the Constitution of India.

2. I have heard learned Counsel for the parties.

3. It is contended by learned Counsel for the petitioner that the petitioner was appointed by the respondent bank on 19.8.1981 on daily/wages basis as peon and continued to serve the respondent bank i.e. State Bank of Bikaner and Jaipur for short "SBBJ" hereinafter) till 25.5.1986 when his services were terminated. The petitioner requested the Appropriate Govt. of India to make a reference to the Industrial Disputes Tribunal for illegally terminating his services. The respondent Union of India instead of making a reference u/s 10 of the Industrial Disputes Act, 1947 (for short "the ID Act" hereinafter) held that the dispute has been raised belatedly after a gap of 16 years without any valid reasons for the delay, hence the dispute has, prima facie, no merit.

4. A reply to writ petition has been filed by respondents wherein respondents

have contended that Appropriate Govt. was justified in not making such a belated reference.

5. Learned Counsel for the petitioner has relied on a Division Bench decision of this Court in Ram Bharos Kharwad v. State of Rajasthan and Anr. RLR 2006(1) 658 and two decisions of Hon"ble Supreme Court in Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr. 1999 SCC 1054 and Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. 2001 SCC 946 and contended that there is no period of limitation prescribed for making reference u/s 10 of the ID Act and therefore, it was not open for the respondent to decline to make the reference. It was also contended that what was required to be seen by the respondent is as to whether the industrial dispute is in existence on the date of reference for adjudication and if the answer is positive, the Govt. ought to have exercised the power whatever be the length of period which elapsed since inception of the dispute.

6. Learned Counsel appearing for the respondents has contended that the petitioner applied for the reference after a lapse of 16 years since termination of his services and therefore, the Appropriate Govt. was justified in not making the reference to the Industrial Disputes Tribunal. Learned Counsel for the respondents has relied on decisions of this Court in Rajendra Singh Gehlot v. Union of India and Ors. 2000 (1) WL C 423 and Satyanarain Sharma v. Union of India and Ors. 2003 (1) W L C 357 and decisions of Hon"ble Supreme Court in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, and Haryana State Coop. Land Development Bank Vs. Neelam,

7. I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

8. Undisputedly, the services of the petitioner as stated by the petitioner in the writ petition were terminated on 25.5.1986 and the petitioner approached the respondent i.e. Govt. of India for making reference for adjudication to the Industrial Disputes Tribunal u/s 10 of the ID Act vide Annex.1 dated 27.12.2002 almost after more than 16 years of his termination and a failure report was submitted on 19.9.2003.

9. The Division Bench of this Court in Ram Bharos Kharwad v. State of Rajasthan and Anr. (supra) held that the dispute does not cease to exist and reference ought not to have been declined merely on the ground of delay.

10. In Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. (supra) Hon"ble Supreme Court while considering the provisions of Section 4-K of the U.P. Act held as under:

8. 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 rekindle 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 sub-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 away, complementary 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.

15. 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 galvanised 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 has 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 mounding 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.

11. In *Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr.* (supra), the Apex Court while considering the delay and laches and effect thereof held that the employer's plea of delay in seeking reference, unless coupled with proof of real prejudice to him, held, not sufficient to deny relief to the workman. Even in cases of proved delay, relief can be mounded by declining whole or part of back wages.

12. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, Hon'ble Supreme Court held that although law does not prescribe any time limit for the appropriate Government to exercise its power u/s 10 of the Industrial Disputes Act, 1947, it is not that this power can be exercised at any point of time so as to revive the matters which had become stale. The learned Judges have held that this power has to be exercised reasonably and in a rational manner and if there is no rational basis for the Government to refer the dispute after long delay

which in that case was 7 years, the Government would be justified in rejecting the reference of the dispute.

13. In *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, before the Hon''ble Supreme Court it was submitted on behalf of the respondents therein that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants therein. The Apex Court did not agree with the contention relying on earlier decision of the Hon''ble Supreme Court in *Shalimar Works Limited Vs. Their Workmen*, wherein it has been held that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particular so when disputes relate to discharge of workmen wholesale.

14. In *Ratan Chandra Sammanta and others Vs. Union of India and others*, Hon''ble Supreme Court held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available.

15. In *U.P. State Road Transport Corporation Vs. Babu Ram*, Hon''ble Supreme Court held that so far as delay in seeking reference is concerned, no formula of universal application can be laid down for determination of the said question, it would depend on facts of each individual case.

16. In *Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar*, Hon''ble Supreme Court held that it may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

17. In *Haryana State Coop. Land Development Bank Vs. Neelam*, Hon''ble Supreme Court held that although, the court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr.* (supra) but it does not mean that irrespective of the facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.

18. In *State of Bombay Vs. K.P. Krishnan and Others*, , a Constitution Bench of Hon''ble Supreme Court held that an obligation is imposed on the Government to refer the dispute unless of course it is satisfied that the notice is frivolous, or vexatious or that considerations of expediency required that a reference should not be made. However, while making an order of refusing to make a reference,

the extraneous or irrelevant or which are not germane, and while considering the expediency, the Appropriate Government is not excluded to consider whether or not, it should exercise its power to make a reference. Even in dealing with the question as to whether it would be expedient or not to make a reference, the Government must not act in punitive spirit but must consider the question fairly and reasonably and take into account only the relevant facts and circumstances. This view has also been reiterated by the Apex Court in *Mathew Areeparmatil and Others Vs. State of Bihar and Others*, and *V. Veerarajan and others Vs. Government of Tamil Nadu and others*,

19. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, , Hon''ble Supreme Court while considering the question as to whether the Commissioner can revise an order made u/s 65 at any time held that it is true that there is no period of limitation prescribed u/s 211, but this power must be exercised in reasonable time.

20. In *Workmen Vs. I.I.T.I. Cycles of India Ltd. and Others*, Hon''ble Supreme Court held that it is not obligatory on the part of the Appropriate Government to make a reference of a dispute in each and every case where the reference is sought as the Government has to weigh the facts keeping in mind the objective of industrial peace and smooth industrial relations between the parties and where the reasons given by the Government for not making the reference, are found to be relevant, the Courts cannot interfere.

21. In *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, Hon''ble Supreme Court held that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time.

22. In *N. Balakrishnan Vs. M. Krishnamurthy*, Hon''ble Supreme Court held that a legal remedy cannot be kept alive for unreasonable period even if the statute does not provide for any limitation.

23. In *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, the Hon''ble Apex Court held that while considering the question as to whether a reference should be made u/s 12 (5), the Appropriate Government has to act u/s 10(1) of the Act which confers discretion on the Government either to refer the dispute or not to refer it. u/s 12(5) of the Act, the appropriate Government is under an obligation to record reasons for not making the reference. However, when the question involves raising a question of law and disputed question of fact, the Appropriate Government should not purport to reach a final decision on the same as it is a subject matter to be decided by the Industrial Tribunal, but it cannot be said that the Appropriate government is precluded from considering even prima-facie the merit of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) r/w Section 12(5) of the Act. The Hon''ble Supreme Court further held that if the claim made is patently frivolous or is clearly belated, the

Appropriate Government may refuse to make reference.

24. In the instant case, the petitioner-workman, whose services were said to have been discontinued by the Management of the respondent in the year 1986, sought to make the reference after a lapse of 16 years without any valid reasons and therefore, the respondent Appropriate Government declined to make the reference.

25. Undoubtedly, there is no limitation provided for making the application for reference, but it is culled from the various decisions of Hon''ble Supreme Court referred herein above that where no limitation is provided, the aggrieved party may approach the authority/ tribunal/Court within reasonable period. The reference may be made to the decisions of Hon''ble Supreme Court in Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim (supra), State of Gujarat v. Patel Raghav Natha and Ors. (supra), N. Balakrishnan v. M. Krishnamurthy (supra), Nedungadi Bank Ltd. v. K.P. Madhvankutty and Ors. (supra), S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (supra), Ratan Chandra Sammanta v. Union of India (supra).

26. The public policy manifested in Industrial Legislation is to achieve the aim of justice and to maintain peace. Long Dormant claims have often more of cruelty than of justice in themselves and therefore, a legal remedy cannot be kept alive for unreasonable period even if the Statute does not provide for any limitation. In this view of the matter, I am of the considered opinion that the reasons recorded by the respondent Appropriate Government for not making the reference after a lapse of 16 years cannot be said to be unreasonable or unjust. The order impugned, therefore, does not warrant any interference in the writ jurisdiction.

27. The writ petition has no force and it is therefore, dismissed. There shall be no order as to costs.